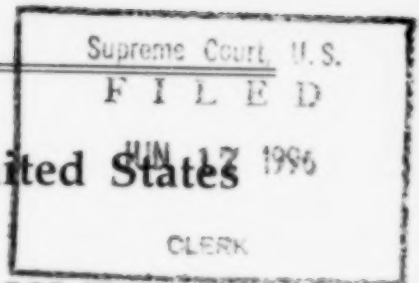


In The
Supreme Court of the United States
October Term, 1995



STATE OF CALIFORNIA, DIVISION OF LABOR STANDARDS
ENFORCEMENT, DIVISION OF APPRENTICESHIP
STANDARDS, DEPARTMENT OF INDUSTRIAL
RELATIONS, COUNTY OF SONOMA,

v. *Petitioners,*

DILLINGHAM CONSTRUCTION, N.A., INC., MANUEL J.
ARCEO, dba SOUND SYSTEMS MEDIA,

Respondents.

On Writ Of Certiorari To The United States Court
Of Appeals For The Ninth Circuit

JOINT APPENDIX

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(Counsel of Record)
VANESSA L. HOLTON,
Asst. Chief Counsel,
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San Francisco, CA 94142)
(415) 972-8900

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Department of Industrial Relations
Division of Apprenticeship Standards*

(Additional Counsel Listed On Inside Cover)

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*Counsel for Respondents
Dillingham Construction, N.A.,
Inc., Manuel S. Arceo, dba
Sound Systems Media*

**Petition For Certiorari Filed November 16, 1995
Certiorari Granted April 15, 1996**

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RAMON YUEN-GARCIA,
Counsel,

State of California
Division of Labor
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Division of Labor Standards
Enforcement and County
of Sonoma*

TABLE OF CONTENTS

	Page
Notation of Documents in the Appendix to the Petition for Certiorari	ii
Chronological List of Relevant Docket Entries	1
Plaintiff Dillingham's Complaint For Declaratory Relief, filed May 1, 1990.....	3
Defendant Division of Apprenticeship Standards' Declaration of Gail Jesswein, filed November 14, 1990.....	36
Plaintiff Dillingham's First Amended Complaint, filed November 30, 1990.....	118
Defendant Division of Apprenticeship Standards' Answer to First Amended Complaint, filed December 21, 1990	133
Defendant County of Sonoma's Answer to First Amended Complaint, filed January 24, 1991.....	144
Defendant Division of Labor Standards Enforce- ment's Answer to First Amended Complaint, filed January 24, 1991	156

Notation of Documents in the Appendix
To The Petition For Certiorari

Page

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Judgment of the United States District Court for the Northern District of California, filed December 11, 1991	App. 23
Opinion of the United States District Court for the Northern District of California, filed December 11, 1991	App. 24
Opinion of the United States Court of Appeals for the Ninth Circuit, filed June 7, 1995	App. 1

Chronological List of Relevant Docket Entries

May 1, 1990, Plaintiff Dillingham's Complaint filed in U.S. District Court for the Northern District of California

May 17, 1990, Division of Labor Standards Enforcement's Answer to Complaint and Counterclaim filed.

May 17, 1990, Defendant County of Sonoma's Answer filed.

July 9, 1990, Division of Apprenticeship Standards' Answer filed.

November 14, 1990, Plaintiffs Dillingham's and Arceo's Motion for Summary Judgment filed.

November 14, 1990, Defendant Division of Labor Standards Enforcement's Motion for Summary Judgment filed.

November 14, 1990, Defendant County of Sonoma's motion to dismiss filed.

November 30, 1990, Plaintiff Dillingham's First Amended Complaint filed.

December 21, 1990, Division of Apprenticeship Standards' Answer to First Amended Complaint filed.

January 24, 1991, Defendant County of Sonoma's Answer to First Amended Complaint filed.

January 24, 1991, Defendant Division of Labor Standards Enforcement's Answer to First Amended Complaint filed.

December 11, 1991, Order entered granting Defendants' Motion for Summary Judgment.

December 11, 1991, Judgment entered in favor of Defendants and dismissing case.

January 15, 1992, Plaintiffs Dillingham's and Arceo's Notice of Appeal filed.

April 14, 1993, Argued and submitted to the Ninth Circuit Court of Appeals.

June 7, 1995, Opinion filed.

June 21, 1995, Defendants Petition for Rehearing with Suggestion for Rehearing en banc filed.

July 19, 1995 Order denying petition for rehearing filed.

RICHARD N. HILL
LITTLER, MENDELSON, FASTIFF & TICHY
A Professional Corporation
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Telephone: (415) 433-1940
Attorneys for Plaintiffs
DILLINGHAM CONSTRUCTION N.A., INC. and
MANUEL J. ARCEO dba SOUND SYSTEMS MEDIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DILLINGHAM CONSTRUCTION	)	Case No.
N.A., INC., a California	)	C 90 1272 FMS
corporation, and MANUEL J.)	
ARCEO dba SOUND SYSTEMS	)	<u>COMPLAINT</u>
MEDIA,	)	<u>FOR</u>
Plaintiffs,	)	<u>DECLARATORY</u>
	)	<u>RELIEF; FOR</u>
v.	)	<u>VIOLATION OF</u>
COUNTY OF SONOMA;	)	<u>42 U.S.C. § 1983;</u>
DEPARTMENT OF INDUSTRIAL	)	<u>AND TO</u>
RELATIONS, DIVISION OF	)	<u>RECOVER</u>
LABOR STANDARDS	)	<u>MONIES</u>
ENFORCEMENT, an administrative	)	<u>ERRONEOUSLY</u>
agency of the State of California;	)	<u>WITHHELD</u>
THE DEPARTMENT OF	)	<u>PURSUANT TO</u>
INDUSTRIAL RELATIONS,	)	<u>CALIFORNIA</u>
DIVISION OF APPRENTICESHIP	)	<u>LABOR CODE</u>
STANDARDS, an administrative	)	<u>§ 1730</u>
agency of the State of California;	)	(Filed May 1,
and INTERNATIONAL	)	1990)
BROTHERHOOD OF ELECTRICAL)	
WORKERS, LOCAL 551,)	
Defendants.)	

Plaintiffs Dillingham Construction N.A., Inc. ("Dillingham Construction") and Manuel J. Arceo dba Sound Systems Media ("Sound Systems") complain as follows against all Defendants:

I

JURISDICTION AND VENUE

1. This Court has federal subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 2201 inasmuch as this is an action for declaratory relief involving federal questions. The federal questions involve the preemptive effect of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001, *et seq.*) and the National Labor Relations Act of 1935, as amended (29 U.S.C. § 151, *et seq.*) upon California's prevailing wage and apprenticeship statutes. Plaintiffs also allege a violation of 42 U.S.C. § 1983. The Court has jurisdiction over the Fourth Cause of Action under the principles of pendent jurisdiction.

2. Venue is proper in this district pursuant to 29 U.S.C. § 1132(e) and 28 U.S.C. § 1391 in that all Defendants reside or are found within the district and the illegal acts from which Plaintiffs' claims arise were committed and had effect within the district.

II

PARTIES

3. Plaintiff Dillingham Construction is a corporation duly organized under the laws of the State of Nevada and is authorized to do business in the State of California.

Dillingham is licensed as a contractor under the laws of the State of California. Dillingham Construction is an employer within the meaning of section 2(2) of the National Labor Relations Act (hereinafter the "NLRA") and section 1002(14) of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA").

4. Plaintiff Sound Systems is licensed as a contractor under the laws of the State of California and is engaged in the business of installing low voltage electrical systems. Sound Systems is an employer within the meaning of section 2(2) of the NLRA and section 1002(14) of ERISA.

5. Defendant County of Sonoma is a political subdivision of the State of California.

6. Defendant Department of Industrial Relations, Division of Labor Standards Enforcement is an administrative agency of the State of California and is charged with investigating and enforcing the State laws concerning, among other things, payment of prevailing wages for public works jobs.

7. Defendant Division of Apprenticeship Standards is an administrative agency of the State of California and is charged with regulating and approving apprenticeship plans according to California law, investigating complaints concerning the operation of apprenticeship plans and enforcing the terms of such plans, including but not limited to apprenticeship standards.

8. Defendant International Brotherhood of Electrical Workers, Local 551 (hereinafter referred to as "IBEW

Local 551") is an unincorporated organization which represents and acts for its members in bargaining with employers concerning wages, hours, working conditions and other terms and conditions of employment. IBEW Local 551 is a labor organization within the meaning of section 2(5) of the NLRA and section 1002(4) of ERISA.

III

GENERAL ALLEGATIONS

9. On or about April 15, 1987, Dillingham Construction was awarded a contract by the County of Sonoma for the construction of a new Main Adult Detention Facility in Santa Rosa, California (hereinafter referred to as the "Detention Facility").

10. On or about April 20, 1987, Dillingham subcontracted certain electrical work to Southern Steel Company, Inc., who in turn subcontracted portions of the work to Elenex, Inc.

11. On or about August 15, 1987, Elenex, Inc. subcontracted the electronic installation work at the Detention Facility to Sound Systems.

12. Sound Systems began performing work on the Detention Facility on or about January 1, 1988. Sound Systems is continuing to perform work at the Detention Facility at the request of the County of Sonoma.

13. The Detention Facility project was a public works project within the meaning of section 1720 of the California Labor Code. Accordingly, Sound Systems requested a determination by the County of Sonoma regarding the appropriate prevailing rates applicable to

all work performed on the Detention Facility project. On December 14, 1988, the Assistant Sonoma County Administrator determined that Sound Systems should comply with Determination C-422-X-1-88-1B pertaining to the craft of telephone installation worker and related classifications. A copy of the December 14, 1988 letter from the Assistant Sonoma County Administrator and Determination C-422-X-1-88-1B are attached hereto as Exhibit A. For all work performed on the Detention Facility project, Sound Systems paid its employees at or above the prevailing rates set forth in Determination C-422-X-1-88-1B.

14. When Sound Systems began work on the Detention Facility project, it was signatory to a collective bargaining agreement with IBEW Local 202. IBEW Local 202 is a labor organization within the meaning of section 2(5) of the NLRA. The collective bargaining agreement between Sound Systems and IBEW Local 202 included a scale of wages for apprentice electronic technicians and required Sound Systems to make contributions to the Northern California Sound and Communications Joint Apprenticeship Training Committee (hereinafter the "Northern California Sound and Communications J.A.T.C."). The Northern California Sound and Communications J.A.T.C. is an employee welfare benefit plan within the meaning of ERISA section 1002(1). Sound Systems complied with the terms of that collective bargaining agreement at all times prior to May 20, 1988.

15. On or about May 20, 1988, IBEW Local 202 withdrew its representation of the electronic technician employees of Sound Systems.

16. On or about June 1, 1988, Sound Systems entered into a new collective agreement with the National Electronic Systems Technicians Union (hereinafter referred to as "NESTU") covering its electronic technician employees. NESTU is a labor organization within the meaning of section 2(5) of the NLRA. The collective bargaining agreement between Sound Systems and NESTU contains a scale of wages for apprentice electronic technicians and requires Sound Systems to make contributions to the Electronic and Communications Systems Joint Apprenticeship and Training Trust ("Electronic and Communications Systems J.A.T.T."). The Electronic and Communications Systems J.A.T.T. is an employee welfare benefit plan within the meaning of ERISA section 1002(1). At all times subsequent to May 31, 1988, Sound Systems has complied with the terms of the NESTU collective bargaining agreement, including the apprentice wage scale and its obligation to make contributions to the Electronic and Communications Systems J.A.T.T.

17. Pursuant to California Labor Code section 1777.5, the Division of Apprenticeship Standards is authorized to approve apprenticeship training programs for apprentices employed on public works projects. On August 15, 1989, the Division of Apprenticeship Standards approved the Electronic and Communications Systems J.A.T.T. as an apprenticeship training program.

18. California Labor Code section 1777.5 provides in pertinent part as follows:

When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him, in performing any of the work under the contract or

subcontract, employees workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of a site for the public work for certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the administrator of apprenticeship.

19. On or about March 14, 1989, Defendant IBEW Local 551 filed a complaint with Division of Apprenticeship Standards against Sound Systems. A true and correct copy of that complaint is attached hereto as Exhibit B. The complaint alleged violations of Labor Code section 1777.5 insofar as it claimed that Sound Systems failed to apply for a certificate to train apprentices and failed to make training fund contributions to the Northern California Sound and Communications J.A.T.C.

20. On or about April 11, 1989, the complaint against Sound Systems was withdrawn on the grounds that the work performed by Sound Systems did not fall under the jurisdiction of the Northern California Sound and Communications J.A.T.C. A true and correct copy of that determination is attached hereto as Exhibit C. Pursuant to this determination, Sound Systems continued to pay apprenticeship contributions to the Electronic and Communications Systems J.A.T.T.

21. On or about April 28, 1989, despite the withdrawal of the aforementioned complaint, Defendant Division of Apprenticeship Standards issued a notice of noncompliance to Plaintiffs asserting a failure by Sound Systems to request certification to train apprentices and a failure to make training fund contributions pursuant to Labor Code section 1777.5.

22. On or about October 20, 1989, Defendant Division of Labor Standards Enforcement issued a Notice To Withhold directing the County of Sonoma to withhold from Dillingham Construction the amount of \$45,103.37 based on the work performed by Sound Systems. This amount consisted of \$30,553.37 in wages allegedly owed and \$14,550.00 in penalties. Plaintiffs are informed and believe that the Notice To Withhold is based on Sound Systems' failure to make contributions to the Northern California Sound and Communications J.A.T.C. and its failure to pay journeyman wages to its apprentice electronic technicians.

FIRST CAUSE OF ACTION - ERISA PREEMPTION

23. Plaintiffs repeat and reallege paragraphs 3 through 22 above and incorporate by reference said paragraphs. This cause of action is for a declaration of Plaintiffs' rights under federal law pursuant to ERISA.

24. There is an actual controversy between Plaintiffs and Defendants concerning the authority of the Division of Apprenticeship Standards and the Division of Labor Standards Enforcement to require Sound Systems to participate in and comply with the terms of the Northern California Sound and Communications J.A.T.C. and to

require Sound Systems to make fringe benefit contributions to the Northern California Sound and Communications J.A.T.C. Specifically, there is an actual controversy between Plaintiffs and Defendants concerning whether application of section 1777.5 of the California Labor Code to Sound Systems is preempted by ERISA.

25. Section 514(a) of ERISA provides in pertinent part as follows:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

26. The Northern California Sound and Communication J.A.T.C. is an employee benefit plan within the meaning of 29 U.S.C. § 1002(1).

27. Application of California Labor Code section 1777.5 to Sound Systems is preempted by ERISA because it relates to an employee benefit plan within the meaning of ERISA. Specifically, any attempt by the Division of Apprenticeship Standards or the Department of Labor Standards Enforcement to force Sound Systems to participate in or make contributions to the Northern California Sound and Communications J.A.T.C. is preempted by ERISA section 514(a).

28. Accordingly, Plaintiffs request a declaration from the Court that Defendants may not attempt to enforce California Labor Code section 1777.5 against Plaintiffs so as to require Sound Systems to participate in

or make contributions to the Northern California Sound and Communications J.A.T.C.

SECOND CAUSE OF ACTION - NLRA PREEMPTION

29. Plaintiffs repeat and reallege paragraphs 3 through 28 above and incorporate by reference said paragraphs. This cause of action is for a declaration of Plaintiffs' rights under federal law pursuant to the NLRA.

30. There is an actual controversy between Plaintiffs and Defendants concerning the authority of the Division of Apprenticeship Standards and the Division of Labor Standards Enforcement to require Sound Systems to pay wages and fringe benefit contributions different than those set forth in its collective bargaining agreement with NESTU. Specifically, there is an actual controversy between Plaintiffs and Defendants concerning whether the application of California's prevailing wage statutes against Sound Systems is preempted by the NLRA.

31. The NLRA and principles of federal supremacy preempt the authority of the Division of Apprenticeship Standards and the Division of Labor Standards Enforcement to enforce California's prevailing wage statutes against Sound Systems so as to require Sound Systems to pay wages and benefits to its apprentice electronic technicians in excess of those set forth in its collective bargaining agreement with NESTU.

32. The NLRA and principles of federal supremacy preempt the authority of the Division of Apprenticeship Standards and the Division of Labor Standards Enforcement to enforce California Labor Code section 1777.5

against Sound Systems so as to require Sound Systems to pay training/apprenticeship contributions other than those set forth in its collective bargaining agreement with NESTU.

33. Accordingly, Plaintiffs request a declaration from the Court that Defendants may not attempt to enforce California's prevailing wage statutes, including Labor Code section 1777.5, against Sound Systems so as to require Sound Systems to pay wages and benefits, including training/apprenticeship contributions, other than those contained in its collective bargaining agreement with NESTU.

THIRD CAUSE OF ACTION - VIOLATION OF 42 U.S.C. § 1983

34. Plaintiffs repeat and reallege paragraphs 3 through 33 above and incorporate by reference said paragraphs. This cause of action is for violation of 42 U.S.C. § 1983.

35. Section 1983 provides in pertinent part that:

Every person who, under color of any statute, ordinance, regulation, customs, or usage of any state . . . subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivations of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . .

36. One of the rights secured by section 1983 is the right of employers and labor organizations to be free of governmental interference in the collective bargaining

process. This right is granted by the NLRA and enforceable under section 1983.

37. Defendants Division of Apprentice Standards and Division of Labor Standards Enforcement have violated the right of Plaintiff Sound Systems to be free of governmental interference in the collective bargaining process by attempting to force Sound Systems to participate in and contribute to the Northern California Sound and Communications J.A.T.C. and by attempting to force Sound Systems to pay wages and fringe benefits in excess of those set forth in its collective bargaining agreement with NESTU.

38. Plaintiffs are entitled to recover compensatory damages, including attorney's fees, from Defendants Division of Apprenticeship Standards and Division of Labor Standards Enforcement in an amount according to proof.

FOURTH CAUSE OF ACTION - RECOVERY OF MONIES ERRONEOUSLY WITHHELD

39. Plaintiffs repeat and reallege paragraphs 3 through 38 above and incorporate by reference said paragraphs. This cause of action is to recover monies erroneously withheld pursuant to Labor Code section 1730, *et seq.*

40. Under California Labor Code section 1730 *et seq.*, when the Division of Labor Standards Enforcement orders an awarding body to withhold money from a contractor or subcontractor based on an alleged failure to pay the required prevailing rate, the contractor or subcontractor must bring suit against the awarding body

within 90 days after completion of the contract and formal acceptance of the job.

41. This complaint is timely because the County of Sonoma has claimed that the Detention Facility project has not yet been completed and thus there has been no formal acceptance of the job.

42. For the reasons set forth above in the first three causes of action, the Notice To Withhold issued by the Division of Labor Standards Enforcement to the County of Sonoma is invalid on the grounds that it is preempted by ERISA, preempted by the NLRA and is a violation of 42 U.S.C. § 1983.

43. In addition, Sound Systems was entitled to rely and did rely on the determination by the Assistant Sonoma County Administrator that Determination C-422-X-1-88-1B applied to all work performed by Sound Systems on the Detention Facility project. In the absence of clear error, bad faith or fraud, none of which are present in this case, the Division of Labor Standards Enforcement was required to accept the classification chosen by the County of Sonoma. This policy was announced by the State Labor Commissioner in Interpretive Bulletin 87-2, a copy of which is attached as Exhibit D.

44. Accordingly, Plaintiffs request that the Court order the Division of Labor Standards Enforcement to rescind the Notice To Withhold issued in Case No. 31-01303 and order the County of Sonoma to release to Dillingham the sum of \$45,103.37 withheld pursuant to that Notice To Withhold.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. That the Court enter a declaratory judgment that Defendants may not enforce California Labor Code section 1777.5 so as to require Sound Systems to participate in or make contributions to the Northern California Sound and Communications J.A.T.C.;
2. That the Court enter a declaratory judgment that Defendants may not enforce California's prevailing wage statutes, including Labor Code section 1777.5, so as to require Sound Systems to pay wages and fringe benefits, including training/apprenticeship contributions, different than those set forth in the collective bargaining agreement between Sound Systems and NESTU;
3. That Plaintiffs be awarded compensatory damages according to proof;
4. That the County of Sonoma be ordered to release to Dillingham Construction the sum of \$45,103.37 withheld pursuant to the Notice To Withhold in Case No. 31-01303;
5. That Plaintiffs be awarded their attorney's fees and costs of suit incurred in prosecuting this action; and
6. That Plaintiffs be awarded such other and further relief as the Court deems just and proper.

DATED: April 30, 1990.

Respectfully submitted,

LITTLER, MENDELSON, FASTIFF
& TICHY

A Professional Corporation

By: /s/ Richard N. Hill
RICHARD N. HILL

Attorneys for Plaintiffs
DILLINGHAM CONSTRUCTION
N.A., INC.
and MANUEL J. ARCEO dba
SOUND SYSTEMS MEDIA

EXHIBIT A

(Seal) OFFICE OF COUNTY ADMINISTRATOR

COUNTY OF SONOMA
 575 Administration Drive - Room 104A
 Santa Rosa, California 95403-2888
 Telephone (707) 527-2431

Tom SCHOPFLIN
 COUNTY ADMINISTRATOR

MIKE CHRYSTAL
 ASST. COUNTY ADMINISTRATOR

December 14, 1988

Richard A. Clarey
 Business Manager
 International Brotherhood of
 Electrical Workers
 Local Union 551
 1702 Corby Avenue
 Santa Rosa, CA 95407

Re: Wage Determination - Electronics Technician

Dear Richard:

This is in response to your December 6 letter, requesting the established wage rate for work being performed by Sound Systems Media at the County's Main Adult Detention Facility project.

Based upon discussions with the Department of Labor representatives, the contractor and our construction manager, I have concluded that the established wage rate for electronic technicians would fit into the craft of telephone installation worker and related classifications. I have attached a copy of the latest wage determination on file in our Public Works Department for this classification.

The determination expired on July 31, 1988 and we have not yet received an update.

It is my further understanding that the electronic technician positions are distinguished from the inside wireman positions based upon high versus low voltage work. The established wage rate for the inside wireman would be the electrician rates per the prevailing wage rate determination which is also attached.

If I can be of any further assistance in this matter, please contact me.

Yours very truly,

/s/ Mike Chrystal
 MIKE CHRYSTAL
 Assistant County Administrator

MC: jt
 cc: Dillingham Construction
 Heery Program Management
 attachment

GENERAL PREVAILING WAGE DETERMINATION
MADE BY THE DIRECTOR OF INDUSTRIAL
RELATIONS PURSUANT TO CALIFORNIA LABOR
CODE PART 7, CHAPTER 1, ARTICLE 2,
SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY
CONSTRUCTION AND DREDGING PROJECTS
CRAFT: TELEPHONE INSTALLATION WORKER AND
RELATED CLASSIFICATIONS

DETERMINATION: C-422-X-1-88-1B

ISSUE DATE: JANUARY 19, 1988

EXPIRATION DATE OF DETERMINATION: JULY 31,
1988** THE RATE TO BE PAID FOR WORK PERFORMED
AFTER THIS DATE HAS BEEN DETERMINED. IF WORK
WILL EXTEND PAST THIS DATE, THE NEW RATE
MUST BE PAID AND SHOULD INCORPORATED IN
CONTRACTS ENTERED INTO NOW. CONTACT THE
DIVISION OF LABOR STATISTICS AND RESEARCH
FOR SPECIFIC RATES (415) 557-0561.

LOCALITY: ALL LOCALITIES WITHIN ALPINE, BUTTE,
CALAVERAS, COLUSA, EL DORADO, FRESNO,
GLENN, HUMBOLDT, KERN, KINGS, LAKE, LASSEN,
MADERA, MARIPOSA, MENDOCINO, MERCED,
MODOC, MONTEREY, NAPA, NEVADA, PLACER,
PLUMAS, SACRAMENTO, SAN BENITO, SAN JOA-
QUIN, SAN LUIS OBISPO, SANTA CRUZ, SHASTA,
SIERRA, SISKIYOU, SOLANO, SONOMA, STANISLAUS,
TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO,
AND YUBA COUNTIES

CRAFT/ CLASSI- FICATION	STEP b	BASIC HOURLY RATE	HEALTH AND WELFARE	EMPLOYER PAYMENTS			STRAIGHT-TIME HOURS	TOTAL HOURLY RATE	OVERTIME 1 1/2 d
				PENSION	VAC/HOL c	TRAINING			
TELE- PHONE INSTAL- LATION WORKER a	1	\$ 6.86	\$.93	\$.91	\$.47	-	8	\$ 9.17	\$12.60
	2	7.45	.93	.91	.52	-	8	9.81	13.54
	3	8.10	.93	.91	.72	-	8	10.66	14.71
	4	8.79	.93	.91	.78	-	8	11.41	15.81
	5	9.55	.93	.91	.84	-	8	12.23	17.01
	6	10.38	.93	.91	.92	-	8	13.14	18.33
	7	11.26	.93	.91	1.00	-	8	14.10	19.73
	8	12.24	.93	.91	1.08	-	8	15.16	21.28
	9	13.29	.93	.91	1.18	-	8	16.31	22.96
	10	14.44	.93	.91	1.28	-	8	17.56	24.78
	11	15.68	.93	.91	1.39	-	8	18.91	26.75

a INCLUDES TELEPHONE INSTALLING, PBX INSTALLING, AND SYSTEMS TECHNICIAN. DOES NOT APPLY TO THE INSTALLATION OF JUNCTION BOXES OR CONDUITS FOR LINE VOLTAGE WIRE OR TO THE PULLING, INSTALLATION, OR CONNECTION OF LINE VOLTAGE WIRE OR CABLES.

b THE TIME INTERVAL BETWEEN STEPS IS SIX MONTHS.

c RATES APPLY TO THE FIRST SIX YEARS OF EMPLOYMENT ONLY: FOR EMPLOYMENT OVER SEVEN YEARS, \$1.69 PER HOUR WORKED; FOR EMPLOYMENT OVER FIFTEEN YEARS, \$1.99 PER HOUR WORKED; FOR EMPLOYMENT OVER TWENTY-FIVE YEARS, \$2.29 PER HOUR WORKED.

d RATE APPLIES TO WORK IN EXCESS OF EIGHT HOURS DAILY AND FOR ALL HOURS OVER 40. RATE APPLIES TO ALL HOURS WORKED ON SUNDAY AND HOLIDAYS

RECOGNIZED HOLIDAYS: HOLIDAYS UPON WHICH THE GENERAL PREVAILING HOURLY WAGE RATE FOR HOLIDAY WORK SHALL BE PAID SHALL BE ALL LEGAL FEDERAL AND/OR STATE HOLIDAYS DETERMINED BY WAGE SURVEYS OR RECOGNIZED IN THE COLLECTIVE BARGAINING AGREEMENT, APPLICABLE TO THE PARTICULAR CRAFT, CLASSIFICATION, OR TYPE OF WORKER EMPLOYED ON THE PROJECT, WHICH IS ON FILE WITH THE DIRECTOR OF INDUSTRIAL RELATIONS.

TRAVEL AND SUBSISTENCE PAYMENTS: THE CONTRACTOR SHALL MAKE TRAVEL AND SUBSISTENCE

PAYMENTS TO EACH WORKER NEEDED TO EXECUTE THE WORK, AS SUCH TRAVEL AND SUBSISTENCE PAYMENTS ARE DEFINED IN THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT FILED WITH THE DIRECTOR OF INDUSTRIAL RELATIONS IN ACCORDANCE WITH LABOR CODE SECTION 1773.8.

EXHIBIT B

Santa Clara County Electrical Joint Apprenticeship and Training Committee

908 Bern Court
San Jose, California 95112
(408) 977-1220
453-1022

[SEAL]

Labor
International Brotherhood
of Electrical Workers -
Local 332
1870 Stone Ave.
San Jose, CA 95125
(408) 294-4906

[SEAL]

Management
Santa Clara Valley
Chapter
National Electrical
Contractors Assn.
P.O. Box 28337
San Jose, CA 95159-8337
(408) 288-6100

December 27, 1988

Sheila Chase
Division of Apprenticeship Standards
100 Paseo de San Antonio
San Jose, CA 95113

Re: Complaint of Violations of Labor
Code Section 1777.5

Dear Sheila:

- 1) Charging Party:
International Brotherhood of Electrical
Workers, Local #551
1702 Corby Ave.,
Santa Rosa, CA 95407

- 1a) Charges being brought thru:
 Northern California Sound & Communications
 J.A.T.C.
 908 Bern Court
 San Jose, CA 95112
 Phone 408 977-1220
- 2) Respondent:
 Sound Systems Media, License #401856
 1495 Schaeffer Road
 Sebastopol, CA 95472
 Owner, Manuel J. Arceo
- 3) Project:
 New Sonoma County Jail
- 4) Awarding Agency:
 Sonoma County
- 5) Contact Person:
 Mr. Mike Crystal
 Assistant County Administrator
 575 Administration Drive
 Santa Rosa, CA 95403
 Phone 707-527-2431

X Did not apply for Certificate to train Apprentices

X No contributions to Training Fund

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Sincerely,

/s/ James W. Evans
 James W. Evans
 Training Director

JWE:ap

Received
 Dec. 28, 1988

EXHIBIT C

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, GOVERNOR

DEPARTMENT OF INDUSTRIAL RELATIONS [LOGO]

DIVISION OF APPRENTICESHIP STANDARDS

1111 Jackson Street, Room 4024

Oakland, CA 94607

Telephone (415) 464-1080

Received
 4-12-18

April 11, 1989

Mr. Manuel J. Arceo
 Sound Systems Media
 1494 Schaeffer Road
 Sebastopol, CA 95472

Dear Mr. Arceo:

Thank you for your prompt response in mailing the DAS 7 to the Northern California Sound and Communication JATC as I instructed you had to be done as a result of the complaint filed against your firm by that JATC for possible violation of Section 1777.5 of the State Labor Code.

Unfortunately, since that complaint was filed and since our meeting of March 23, 1989, the complaint has been withdrawn and, consequently, makes the DAS 7 you filed with that committee invalid.

My understanding of the matter is that that committee erred in filing the complaint, as they are claiming that the project you are working on does not come under the provisions of that committee.

As a result of their withdrawal letter, I am marking the complaint "Complaint Withdrawn," closing the case and returning the complaint to my Headquarters.

I would like to clarify another matter as I gave you some erroneous information when we met on the 23rd, and you should be aware of it if the same situation should arise in the future.

When I informed you that, as there were no contributions for training funds listed on the prevailing wage determination, and that you were not required to pay any training funds was incorrect. Attached is a copy of the Director's prevailing wage for Sonoma County. Please look on the back of the determination under "Notes." As you can see, training fund contributions are required if the apprenticeship committee in that area required a contribution in the apprenticeship standards.

Please accept my apologies for not giving you the correct information.

If you have any questions, please contact me at the above number.

Administration Representative

/s/ Frank Mendez
Frank Mendez
Senior Consultant
Oakland - District #06

Attachment

cc: Dillingham Construction
Mike Chrystal, Awarding Body

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1720, 1773 AND 1773.1
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND MARINE PROJECTS

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF EMPLOYMENT RELATIONS
OFFICE OF THE DIRECTOR
1500 MARKET STREET, SUITE 100
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 398-2000
FAX (415) 398-2001
WWW.DIR.CA.GOV

LOCALITY: SONOMA COUNTY
DETERMINATION: SON-89-1

CRAFT (JOURNEY LEVEL)	ISSUE DATE	EXPIRATION DATE	BASIC HOURLY RATE	EMPLOYER PAYMENTS			STRAIGHT-TIME			OVERTIME HOURLY RATE		
				HEALTH AND WELFARE	PENSION	VACATION	TRAINING AND/OR OTHER	HOURLY	TOTAL HOURLY RATE	DAILY	SATURDAY	SUNDAY AND HOLIDAY
BRICKLAYER, BLOCKLAYER, CAULKER, CLEANER, CORK-LAYER, STONEMASON, TUCK POINTER	08/22/88	06/30/89	A 92.05	3.00	5.60	B 3.32	0.13	7	32.10	43.405	43.405	54.87
BRICK TENDER	08/22/88	06/30/89	19.20	1.90	2.16	C	-	0	23.26	32.06	32.06	32.06
CARPET, LINOLEUM, RESILIENT TILE LAYER	02/22/89	07/31/89	A 19.92	2.07	2.95	2.82	0.29	0	26.05	E 30.01	47.97	47.97
AFTER 5 YEARS EMPLOYMENT WITHIN CARPET LAYERS CONFERENCE NO. 1	02/22/89	07/31/89	A 19.92	2.07	2.95	2.97	0.29	0	28.20	E 30.26	48.12	48.12
ELECTRICIAN:												
CORN & SYSTEM INSTALLER	02/22/89	09/30/89	16.73	1.04	F	6 1.00	-	0	17.36	M 24.94	M 24.94	M 24.94
CORN & SYSTEM TECH.	02/22/89	09/30/89	16.96	1.04	F	1 1.24	-	0	19.82	M 28.55	M 28.55	M 28.55
INSIDE WIREMAN	05/22/88	06/30/89	23.00	2.89	F 3.75	-	0.05	0	30.30	J 42.225	J 42.225	54.87
CABLE SPlicer	05/22/88	06/30/89	25.30	2.89	F 3.75	-	0.05	0	32.75	J 45.70	J 45.70	50.81
FIELD SURVEYOR:												
CHIEF OF PARTY	02/22/89	07/15/89	22.47	2.79	4.10	2.50	0.34	0	32.20	43.435	43.435	54.67
(010.167-010) L												
INSTRUMENTMAN	02/22/89	07/15/89	20.30	2.79	4.10	2.50	0.34	0	30.11	40.30	40.30	50.49
(010.167-034) L												
CHAINMAN/ROOMMAN	02/22/89	07/15/89	18.47	2.79	4.10	2.50	0.34	0	28.20	37.435	37.435	46.67
(069.567-010) L												
GLAZIER	08/22/87	06/30/89	A 21.55	2.43	3.90	C	0.30	0	28.26	E 39.035	49.81	49.81
MARBLE FINISHER	02/22/89	06/30/89	16.92	1.82	0.35	1.75	-	7	20.04	37.76	37.76	37.76
MARBLE SETTER	11/22/88	07/31/89	A 21.20	3.00	5.60	M 3.32	0.00	M 7	33.20	57.12	57.12	57.12
PAINTER:												
TAPER	11/22/88	06/30/89	A 24.23	2.10	2.12	0 1.20	0.12	0	29.77	41.635	53.50	53.50
BRUSH, POWER OR STEAM CLEANER, STEEL, PAPER-HANGER (FOR COMMERCIAL JOBS OVER 95 MILLION) P	05/22/88	12/31/88	A 22.70	2.10	2.12	0 1.20	0.06	0	28.26	39.475	50.69	50.69
STEEL, PAPER-HANGER, STEEL, PAPER-HANGER, (FOR COMMERCIAL JOBS UNDER 95 MILLION) P	05/22/88	12/31/88	A 19.42	2.10	2.12	0 1.20	0.06	0	24.90	34.435	43.97	43.97
SPRAY PAINTER, SAND BLASTER MATERIALBLASTER (FOR COMMERCIAL JOBS OVER 95 MILLION) P	05/22/88	12/31/88	A 23.20	2.10	2.12	0 1.20	0.06	0	28.76	40.225	51.69	51.69
SPRAY PAINTER, SAND BLASTER, MATERIALBLASTER (FOR COMMERCIAL JOBS UNDER 95 MILLION) P	05/22/88	12/31/88	A 19.92	2.10	2.12	0 1.20	0.06	0	25.40	35.185	44.97	44.97
PLASTER TENDER	11/22/88	06/30/89	10.40	3.00	3.00	3.76	0 0.26	0	20.50	46.90	46.90	46.90
PLASTER	08/22/88	06/30/89	19.19	1.90	2.16	C	-	0	23.25	32.045	32.045	42.44
PLUMBER:												
PLUMBER, STEAMFITTER REFRIGERATION FITTER (HVAC)	08/22/88	06/30/89	26.84	M 4.165	M 4.66	M 2.75	S 4.075	7	42.49	84.90	84.90	84.90
SERVICE AND REPAIR (HVAC) C) U	08/22/88	06/30/89	A 26.79	M 4.165	M 4.66	M 2.75	T 3.975	7	42.34	84.68	84.68	84.68
SPRINKLER FITTER (FIRE PROTECTION AND FIRE CONTROL SYSTEMS)	08/22/88	06/30/89	A 24.62	3.79	4.66	2.33	V 3.975	0	39.375	M 51.605	X 51.605	63.995
ROOFER:												
ROOFER, ENAMELER, PIPE WRAPPER, COAL TAR PITCH BUILD-UP	11/22/88	07/31/89	29.745	2.05	5.60	C	0.30	0	37.695	52.57	52.57	67.44
NASTIC WORKER, KETTLEMAN	08/22/88	07/31/89	10.30	2.35	2.75	2.87	0.10	0	26.37	35.52	35.52	35.52
SHEET METAL WORKER & HVAC	06/22/88	07/31/89	20.30	2.35	2.75	2.87	0.10	0	28.37	38.52	38.52	38.52
TILE FINISHER	11/22/88	06/30/89	A 27.62	2.43	Y 4.84	C	Z 0.66	0	35.55	62.07	62.07	62.07
TILE SETTER	08/22/87	02/28/89	16.17	1.03	1.40	AA	0.03	0	21.13	30.82	30.82	30.82
WATER WELL DRILLER	05/22/88	03/31/89	21.63	2.50	1.84	2.69	0.15	0	28.03	39.445	50.46	50.46
PUMP INSTALLER	02/22/89	01/31/90	13.17	1.60	0.30	0.54	-	0	15.63	CC 22.215	CC 22.215	CC 22.215
HELPER	02/22/89	01/31/90	9.10	1.60	0.30	0.42	-	0	11.42	CC 15.97	CC 15.97	CC 15.97

SEE FOOTNOTES ON REVERSE

[These are Footnotes for reverse side of form]

GENERAL PREVAILING WAGE DETERMINATION
MADE BY THE DIRECTOR OF INDUSTRIAL
RELATIONS PURSUANT TO CALIFORNIA LABOR
CODE PART 7, CHAPTER 1, ARTICLE 2,
SECTIONS 1770, 1773 AND 1773.1

- * EFFECTIVE UNTIL SUPERSEDED BY NEW DETERMINATION ISSUED BY THE DIRECTOR OF INDUSTRIAL RELATIONS. CONTACT DIVISION OF LABOR STATISTICS AND RESEARCH ((415) 557-0561) FOR NEW RATES AFTER 10 DAYS FROM THE EXPIRATION DATE IF NO SUBSEQUENT DETERMINATION IS ISSUED.
 - ** THE RATE TO BE PAID FOR WORK PERFORMED AFTER THIS DATE HAS BEEN DETERMINED. IF WORK WILL EXTEND PAST THIS DATE, THE NEW RATE MUST BE PAID AND SHOULD BE INCORPORATED IN CONTRACTS ENTERED INTO NOW. CONTACT THE DIVISION OF LABOR STATISTICS AND RESEARCH FOR SPECIFIC RATES ((415) 557-0561).
 - S INDICATES AN APPRENTICEABLE CRAFT, RATES FOR APPRENTICES WILL BE FURNISHED ON REQUEST.
 - A THE BASIC HOURLY RATE AND EMPLOYER PAYMENTS ARE NOT TAKEN FROM A COLLECTIVE BARGAINING AGREEMENT FOR THIS CRAFT OR CLASSIFICATION.
-
- A INCLUDES AMOUNT WITHHELD FOR DUES CHECK OFF.
 - B RATE IS DOUBLED FOR EACH OVERTIME HOUR.
 - C INCLUDED IN STRAIGHT-TIME HOURLY RATE.

- D SATURDAYS IN THE SAME WORK WEEK MAY BE WORKED AT STRAIGHT-TIME IF JOB IS SHUT DOWN DURING THE NORMAL WORKWEEK DUE TO INCLEMENT WEATHER.
- E RATE APPLIES TO THE FIRST 2 OVERTIME HOURS; ALL OTHER TIME IS PAID AT THE SATURDAY OVERTIME HOURLY RATE.
- F IN ADDITION, AN AMOUNT EQUAL TO 3% OF THE HOURLY RATE IS ADDED TO DAILY AND OVERTIME HOURLY RATES FOR THE NATIONAL EMPLOYEES BENEFIT BOARD.
- G AFTER FIVE YEARS OF SERVICE \$1.36 PER HOUR.
- H RATE DOES NOT INCLUDE ANY APPLICABLE INCREASE IN VACATION/HOLIDAY PAYMENT.
- I AFTER FIVE YEARS OF SERVICE \$1.57 PER HOUR.
- J RATE APPLIES TO THE FIRST 2 DAILY OVERTIME HOURS AND THE FIRST 8 HOURS ON SATURDAY ONLY; ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME HOURLY RATE.
- K FRIDAY IS A 4-HOUR WORKDAY.
- L DICTIONARY OF OCCUPATIONAL TITLES, FOURTH EDITION, 1977, U.S. DEPARTMENT OF LABOR.
- M CONTRIBUTION IS FACTORED AT THE APPLICABLE OVERTIME MULTIPLIER FOR EACH OVERTIME HOUR WORKED.
- N 8 HOURS DAILY, MONDAY THROUGH FRIDAY ON ALL JOBS LOCATED 90 MILES OR MORE FROM SAN FRANCISCO CITY HALL.
- O INCLUDES AN AMOUNT PER HOUR WORKED FOR BENEFICIAL FUND.

- P A SPECIAL PREVAILING WAGE DETERMINATION FOR REPAINT WORK MAY BE AVAILABLE. PLEASE CONTACT THE DIVISION OF LABOR STATISTICS AND RESEARCH 45 DAYS PRIOR TO BID ADVERTISEMENT FOR A RESPONSE.
- Q INCLUDES AN AMOUNT PER HOUR WORKED FOR SUPPLEMENTAL DUES.
- R RATE APPLIES TO THE FIRST 8 HOURS WORKED; ALL OTHER TIME IS PAID AT THE SUNDAY AND HOLIDAY OVERTIME HOURLY RATE.
- S INCLUDES 30.5¢ PER HOUR WORKED FOR TRAINING, 73¢ FOR SUPPLEMENTAL TRAINING, 20¢ FOR SUPPLEMENTAL UNEMPLOYMENT INSURANCE AND \$2.00 FOR SECURITY SAVINGS PLAN. THE WHOLE CONTRIBUTION AMOUNT IS DOUBLED FOR EACH OVERTIME HOUR WORKED.
- T INCLUDES 27.5¢ FOR TRAINING, 50¢ FOR SUPPLEMENTAL TRAINING, 20¢ FOR SUPPLEMENTAL UNEMPLOYMENT INSURANCE AND \$3.00 FOR SECURITY SAVINGS PLAN. THE WHOLE CONTRIBUTION AMOUNT IS DOUBLED FOR EACH OVERTIME HOUR WORKED.
- U DUTIES ARE LIMITED TO THE CLEANING, SERVICING, ADJUSTING, REPAIRING AND REPLACING OF MINOR PARTS, EQUIPMENT AND ADJUNCT ACCESSORIES ON PACKAGE HEATING AND AIR CONDITIONING EQUIPMENT.
- V INCLUDES 27.5¢ FOR TRAINING, 50¢ FOR SUPPLEMENTAL TRAINING, 20¢ FOR SUPPLEMENTAL UNEMPLOYMENT INSURANCE AND \$3.00 FOR SECURITY SAVINGS PLAN.
- W RATE APPLIES TO THE FIRST 2 OVERTIME HOURS ONLY; ALL OTHER TIME IS PAID AT THE

SUNDAY AND HOLIDAY OVERTIME HOURLY RATE.

- X SATURDAY MAY BE PAID AT STRAIGHT TIME IF THE WORK WEEK IS TUESDAY THROUGH SATURDAY.
- Y INCLUDES AN AMOUNT PER ___ HOUR WORKED FOR COLA FUND.
- Z INCLUDES 18¢ PER HOUR FOR SUPPLEMENTAL UNEMPLOYMENT BENEFITS.
- AA IN ADDITION, AN AMOUNT EQUAL TO 10% OF THE HOURLY RATE IS ADDED TO THE DAILY AND OVERTIME HOURLY RATE FOR VACATION/HOLIDAY FUND.
- BB RATE APPLIES TO THE FIRST TWO YEARS OF EMPLOYMENT ONLY: \$1.10 AFTER 2 YEARS; \$1.21 AFTER 5 YEARS; \$1.36 AFTER TEN YEARS.
- CC COMPUTATION IS BASED ON THE LOWEST VACATION AMOUNT. THESE RATES SHOULD BE INCREASED BY ANY ADDITIONAL VACATION/HOLIDAY PAY THAT IS REQUIRED.
- DD RATE APPLIES TO THE FIRST TWO YEARS OF EMPLOYMENT ONLY: 97¢ AFTER FIVE YEARS; \$1.14 AFTER TEN YEARS.

NOTE: TRAINING AND TRUST FUND CONTRIBUTIONS FOR CRAFTS AND CLASSIFICATIONS IN APPRENTICEABLE OCCUPATIONS ARE REQUIRED TO BE MADE IN ACCORDANCE WITH THE APPROPRIATE JOINT APPRENTICESHIP TRAINING STANDARDS SET FORTH IN LABOR CODE SECTION 1777.5. IF THE APPROPRIATE RATES ARE NOT SPECIFIED BY A DETERMINATION, THEY MAY BE ASCERTAINED BY CONTACTING THE APPROPRIATE

JOINT APPRENTICESHIP TRAINING COMMITTEE OR THE LOCAL OFFICE OF THE DIVISION OF APPRENTICESHIP STANDARDS.

RECOGNIZED HOLIDAYS: HOLIDAYS UPON WHICH THE GENERAL PREVAILING HOURLY WAGE RATE FOR HOLIDAY WORK SHALL BE PAID, SHALL BE ALL HOLIDAYS DETERMINED BY WAGE SURVEYS OR RECOGNIZED IN THE COLLECTIVE BARGAINING AGREEMENT, APPLICABLE TO THE PARTICULAR CRAFT, CLASSIFICATION, OR TYPE OF WORKER EMPLOYED ON THE PROJECT, WHICH IS ON FILE WITH THE DIRECTOR OF INDUSTRIAL RELATIONS.

TRAVEL AND SUBSISTENCE PAYMENTS: THE CONTRACTOR SHALL MAKE TRAVEL AND SUBSISTENCE PAYMENTS TO EACH WORKER NEEDED TO EXECUTE THE WORK, AS SUCH TRAVEL AND SUBSISTENCE PAYMENTS ARE DEFINED IN THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT FILED WITH THE DIRECTOR OF INDUSTRIAL RELATIONS IN ACCORDANCE WITH LABOR CODE SECTION 1773.8.

EXHIBIT D

State of California

MEMORANDUM

To: All Professional Staff

Date April 6, 1987

Subject Interpretive Bulletin
No. 87-2Auditing Contractors Using
Erroneous or Doubtful
Classifications and Wage
Rates on Public Works
Projects

From: Department of Industrial Relations

Division of Labor Standards Enforcement
Lloyd W. Aubry, Jr.
State Labor Commissioner

It has been and continues to be the Division's policy that it is the responsibility of the awarding bodies, and not the Division, under Labor Code Section 1773.2 to determine the appropriate classifications and wage rates on public works projects. The Division recognizes that many awarding bodies are not aware of or do not accept this responsibility and leave such determinations to the contractor. The Division also recognizes that many of these classification and wage rate issues are difficult and that it is not appropriate for the Division to adjudicate jurisdictional disputes in such cases when other forums, especially created or constituted for this purpose, exist.

Accordingly, in order to provide guidance to deputies enforcing the prevailing wage laws when they learn

of the possible misuse of a classification or wage rate, the following enforcement policy shall be in effect:

In cases where it is contended that inappropriate classifications or wage rates are being used, an audit or determination which alters the chosen classification or wage rate will be effected only in cases of clear error, bad faith or fraud. When such contentions are made, the investigating deputy should seek from the party making the contention specific evidence to support the claim. In all other cases, the classification chosen by the awarding body or contractor shall be respected.

Any questions on implementation of this policy are to be referred to your Senior Deputy or Regional Manager who may seek guidance from the Division of Labor Statistics and Research, if appropriate.

/s/ Lloyd Aubry, Jr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SONOMA; DEPARTMENT
OF INDUSTRIAL RELATIONS,
DIVISION OF LABOR STANDARDS
ENFORCEMENT, an administrative
agency of the State of California; et al.,
Defendants.

REYV KIM DEARING, individually;
REYV KIM DEARING dba
WATERPROOFING UNLIMITED, et al
Third Party Defendants.

(Filed
Nov. 14, 1990)

4. In my capacity as Chief of DAS and Secretary of CAC, I am custodian of all records relating to the administration of Apprenticeship laws in California. Attached hereto and incorporated herein as Exhibit A is a true and correct copy of the letter of 2-13-78 from the DOL/BAT to Chief of DAS approving the CAC as the body to register

apprenticeship programs and agreements for federal purposes. The letter has been maintained in the files of the DAS since it was received.

5. The DAS sought continued recognition of the CAC by the DOL/BAT for federal purposes in May of 1977. The DAS requested recognition by submitting to the DOL/BAT copies of the California apprenticeship law and regulations, the California Plan for Equal Opportunity in Apprenticeship, and a "checklist" setting forth the state compliance with the Fitzgerald Act and regulations under 29 CFR Part 29. Attached hereto and incorporated herein as Exhibit B are true and correct copies of the letter dated 5-25-77 from the DAS Chief to the DOL/BAT, and the attached "29 CFR Checklist." The letter and checklist have been maintained in the files of the DAS since they were sent to DOL/BAT.

6. As part of the process of gaining recognition for the CAC as a state approved council by the by [sic] DOL/BAT, the DOL/BAT conducted a review of California law and regulations to determine if they complied with Title 29 of the Code of Federal Regulations Part 29. As a result of the review, the DOL/BAT informed DAS that certain items appeared to be deficient. Attached hereto and incorporated herein as Exhibit C is a true and correct copy of the October 6, 1977 letter from DOL/BAT to the Chief of DAS and the attached "Checklist" regarding DOL/BAT's review of California law and regulations. The letter and checklist have been maintained in the files of the DAS since they were received.

7. DAS responded to the DOL/BAT's letter of 10-6-77 by letter dated 12-16-77. The letter provided

additional data relating to state apprenticeship procedures for consideration by DOL/BAT in ruling on approval of the CAC. A true and correct copy of the DAS' letter of 12-16-77 to the DOL/BAT is attached hereto and incorporated herein as Exhibit D. The letter has been maintained in DAS files since it was sent to DOL/BAT.

8. The DOL/BAT conducts periodic reviews of California apprenticeship laws and regulations under 29 CFR Parts 29 and 30. The most recent state compliance review of its operations was conducted on August 13, 1990 at DAS Headquarters. Attached hereto and incorporated herein as Exhibit E are true and correct copies sent to DAS from DOL/BAT of the attached "SAC Review Checklist" and "Management Review of SAC Operations" documents. The attached documents have been maintained in DAS files since they were received from DOL/BAT.

I attended the state compliance review meeting with the Regional Director and State Director of DOL/BAT on August 13, 1990. During our meeting we discussed each and every item contained in the "SAC Review Checklist" and the "Management Review of SAC Operations." We discussed the state apprenticeship laws and regulations and the manner in which they conform to 29 CFR Parts 29 and 30.

9. DAS and DOL/BAT entered into agreement on 2-24-86, supplanting an earlier agreement, governing the procedures to cooperatively carry out the provision of the Fitzgerald Act, 29 CFR Parts 29 and 30, the California Apprenticeship Law (Shelly-Maloney Apprentice Labor Standards Act of 1939), and the California Administrative

Code, Title 8, Chapter 2. A true and correct copy of the "State of California Cooperative Working Agreement for the Division of Apprenticeship Standards and Bureau of Apprenticeship and Training" dated 2-24-86 is attached hereto and incorporated herein as Exhibit F. My signature appears on Page 9 of the Agreement on behalf of the Division of Apprenticeship Standards. The present Agreement has not been modified or terminated since its execution and is still in effect at this time.

10. As Chief of the DAS, I have responsibility under Title 8 of the California Administrative Code §212 to approve written apprenticeship standards. In determining whether to approve written standards, I determine whether the standards contain the substantive provisions required by §212 of Title 8 of the California Administrative Code.

When apprenticeship standards are submitted for approval and where approval would result in establishment of a second apprenticeship program for the same geographical area and occupation, I am authorized under §212.2 to approve such standards if they meet the requirements of §212 and if approval would not lower or adversely affect existing prevailing conditions and training standards. Approval for a "second" apprenticeship program in a given occupation and geographical area is permitted when the apprenticeship training needs are justified. Approval has been given for additional apprenticeship programs that include electrical, machinists, stationary engineers, carpenters, cement mason, painter and plumber committees in areas where operating programs presently exist.

11. The California Apprenticeship Council has adopted a "State of California Plan for Equal Opportunity In Apprenticeship" which is an appendix to 8 California Administrative Code §215. The present plan was first adopted on July 30, 1971 to conform to 29 CFR Part 30 and has been amended several times. The present plan supplanted an earlier California plan that did not meet the 29 CFR Part 30 criteria.

The U.S. Department of Labor, Bureau of Apprenticeship and Training has approved for federal purposes the Plan and amendments up through the amendment which became effective on November 28, 1983.

The Plan underwent minor non-substantive amendments effective September 28, 1986.

12. Effective August 15, 1989, I approved the Apprenticeship Standards and Selection Procedures for the Electronic and Communication Systems Joint Apprenticeship Committee for the occupation of Electronic and Communications Systems Technician.

13. By letter of approval dated August 15, 1989, I advised Dale L. Kirkland, Executive Director, Electronic and Communications Systems Joint Apprenticeship and Training Committee, that his JAC should limit its apprenticeship activities to preliminary functions only until the approval becomes an order of the council. Only when this approval became a final order would it allow his JAC to pay lower wages to apprentices than journeymen. See Labor Code §§3077 and 1777.5.

14. In my letter of approval to Kirkland, I quoted Cal Code of Regulations, Title 8, §212.2(b) as follows:

" . . . the decision of the Chief DAS regarding approval or disapproval of apprenticeship program standards shall become an Order of the California Apprenticeship Council unless an appeal as provided by subdivision (c) of this section is filed, . . . " Section 212.2(c) states " . . . the sponsor(s) of an existing program(s) may file an appeal of the decision of the Chief DAS with the California Apprenticeship Council . . . " " . . . The Chief DAS's decision shall be the order of the Council if no appeal is filed within 30 days of the receipt of the decision by the parties . . . "

My approval would not be final until any appeal had been decided by the Council.

15. The existing program sponsor, Northern California and Northern Nevada Sound and Communication Joint Apprenticeship and Training Committee did file a timely appeal, thereby suspending my approval. The California Apprenticeship Council hearing panel issued a Proposed Decision recommending that my decision be sustained and adopted. Effective October 26, 1990 the California Apprenticeship Council approved the Proposed Decision of its hearing panel. (See attached copy.)

16. Under Labor Code §3084, and 8 CCR §212.2, any party aggrieved by this decision, including one aggrieved by lack of retroactivity, has until December 5 to file a writ in Superior Court. As of this date I have received no notice of any writ.

17. The foregoing statements are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at South San Francisco, California.

Dated: 11-9-90 /s/ Gail W. Jesswein
Gail W. Jesswein, Chief
Division of Apprenticeship
Standards

EXHIBIT A

U.S. DEPARTMENT OF LABOR

Employment And Training Administration

Washington, D.C. 20213

(LOGO)

February 13, 1978

Mr. Edward W. Wallace
Chief, Division of Apprenticeship
Standards
Department of Industrial
Relations - Room 3230
455 Golden Gate Avenue
San Francisco, California 94102

Dear Ed:

By authorization of the Secretary of Labor and in accordance with the provisions of Title 29 CFR Part 29.12, I am pleased to grant recognition, effective this date, to the State of California Apprenticeship Council as the appropriate body for State registration and/or approval of local

apprenticeship programs and agreements for Federal purposes.

The amendment to the Administrative Code and other documents submitted correct the deficiencies as recorded in my letter of October 6, 1977. I am particularly pleased that we can and will work together in partnership, under the conditions of Title 29 CFR Part 29, to formulate and promote labor standards that will protect the apprentice and for the skilled work force necessary for the welfare of the State of California and the Nation.

Sincerely,

/s/ Hugh C. Murphy
HUGH C. MURPHY
Administrator
Bureau of Apprenticeship
and Training

EXHIBIT B

State of California - Agriculture and Services Agency
EDMUND G. BROWN, JR. Governor

Department of Industrial Relations
DIVISION OF APPRENTICESHIP STANDARDS
455 Golden Gate Avenue
San Francisco 94102

ADDRESS REPLY TO:
P.O. BOX 603
SAN FRANCISCO CA 94101

May 25, 1977

Mr. Morris E. Skinner, Regional Director
Bureau of Apprenticeship & Training
U. S. Department of Labor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Mr. Skinner:

The Division of Apprenticeship Standards, on behalf of the California Apprenticeship Council, has reviewed Section 29.12 of 29CFR, Part 29, dated February 18, 1977, to determine if we comply with each element of the approval criteria for the Secretary's recognition of the California Apprenticeship Council. Our review is reflected on the *29CFR Checklist*.

We find that our existing law regulations fulfill the requirements for recognition with one exception - there are no provisions for reciprocity between the Council and other state apprenticeship agencies.

The California Apprenticeship Council has proposed a new section to be added to the Council's rules and regulations. The new section would read:

Proposed amendment to Title 8, Chapter 2, Part 1

Sec. 206 (a) The purpose and intent, etc. (no change)

Add (b) Apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multistate basis and are registered pursuant to all requirements of Title 29 Code of Federal Regulations, Part 29, as adopted February 15, 1977, by any recognized State Apprenticeship Agency/Council or by the Bureau of Apprenticeship and Training, U. S. Department of Labor, shall be accorded approval reciprocity by the Administrator of Apprenticeship, if such reciprocity is requested by the sponsoring entity.

We feel that the addition to the Council's rules and regulations will complete the requirements for recognition.

The California Apprenticeship Council must comply with the California Government Code when it promulgates regulations. The Government Code requires a specified period of time prior to adoption of regulations to consider any arguments at a public hearing and for regulations to be filed with the Secretary of State. A period of over 60 days is necessary to complete the adoption of new regulations and have them become effective.

It is not possible for the Council to promulgate the necessary regulation in time to meet the July 18, 1977, deadline to submit the application for recognition of the California Apprenticeship Council. We, therefore, request an interim

approval with an extension requested to allow the Council sufficient time to include the section regarding reciprocity in its rules and regulations. The new section should become effective early in September, 1977.

Supporting documents enclosed include:

- 1) The Shelley-Maloney Apprentice Labor Standards Act of 1939
- 2) California Administrative Code, Title 8, Chapter 2
- 3) California Plan for Equal Opportunity in Apprenticeship
- 4) 29CFR Checklist

Sincerely,

Edward W. Wallace, Chief
(415) 557-1700

EWV:CDR:ds
Encls.

CALIFORNIA APPRENTICESHIP COUNCIL

29 CFR Checklist

INTRODUCTION. This brief checklist is designed for use by individuals responsible for the preparation of State recognition packages to ensure that all necessary items are included in the package. The checklist will also assist Federal staff responsible for determining the adequacy and acceptability of the State submissions.

State Apprenticeship Law and Regulations

References: 29.12(a)(1); 29.12(b)(1)

A. Is there evidence of an acceptable state Apprenticeship Law (or Executive Order)?

Yes No

X —

1. Is the apprenticeship agency established in:

- the State department of Labor
- another State agency having appropriate jurisdiction over laws and regulations governing wages, hours, working conditions?

X —

If yes, name the Agency:
Department of Industrial Relations

X —

2. Does the law (or regulations) state that the following are the characteristics of apprenticeship occupation:

- it is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training (29.4(a))
- it is clearly identified and commonly recognized throughout an industry.
- it involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.

X —

X —

X —

- it requires related instruction to supplement the on-the-job training.

X —

B. Are there regulations adopted to implement the law (or Executive Order)?

X —

- If yes, what is the effective date of the regulations? Adopted 1940

II. State Apprenticeship Council

References: 29.12(a)2; 29.12(b)(2), (b)(3), (b)4)

A. Is the composition of the State Apprenticeship Agency/Council acceptable?

X —

1. Is there evidence that members are familiar with apprenticeship occupations?

X —

2. What is the composition and voting privilege of the council?

Number
of Voting
Members

- Management

Representatives

6 6

- Labor Representatives

6 6

- Public Representatives

2 2

- Education Representatives

2 2

- Other (specify):

Director of Industrial Relations

1 1

Total Representatives

17 17

	<u>Yes</u>	<u>No</u>
3. Are there ex-officio members on the Agency Council?	<u>X</u>	—
4. Are ex-officio members also regular voting members?	<u>X</u>	—
— If not, are there established practices and procedures for ex-offices voting privileges under exceptional circumstances?	—	—
B. Are the powers and duties of the Council clearly delineated?	<u>X</u>	—
C. Are the powers and duties of the State Official for apprenticeship clearly delineated?	<u>X</u>	—
— Is the State Official a member of the State Agency/Council?	<u>X</u>	—
D. Is the Agency/Council or State Official clearly (authorized) to register and deregister apprenticeship programs and agreements?	<u>X</u>	—
— If yes, specify who is authorized: <u>Administrator of Apprenticeship</u>		
E. Is the procedure for registration and deregistration described?	<u>X</u>	—
III. <u>State Plan for Equal Employment Opportunity in Apprenticeship</u>		
References: 29.12(a)(3); 29.12(b)(5); 29 CFR Part 30 as amended		
A. Is there evidence of an acceptable State Plan for EEO in Apprenticeship?	<u>X</u>	—
— Is the equal opportunity pledge (30.3(b)) included in the submission?	<u>X</u>	—

B. Do the State provisions establish policies and procedures to promote EEO in apprenticeship programs pursuant to the State plan?	<u>X</u>	—
C. Do the State provisions require apprenticeship programs to operate in conformity with the State Plan?	<u>X</u>	—
IV. <u>Basic Standards, Criteria, and Requirements for Program Registration</u>		
Reference: 12.12(a)(4); 12.12(b)(6), (b)(7)		
A. Does the description of the basic standards for registration/approval of apprenticeship programs comply with 29.5?	<u>X</u>	—
1. Does the program description incorporate the terms and conditions of employment, training and supervision of one or more apprentices in the apprenticeship occupation?	<u>X</u>	—
— Are there provisions for all sponsors of apprentice training programs to comply with the terms and conditions set forth in the program description?	<u>X</u>	—
2. Does the program description include the equal opportunity pledge prescribed in 29 CFR 30.3(b)?	<u>X</u>	—

- When applicable, does the description call for the documentation of an affirmative action plan in accordance with 29 CFR 30.4, a selection method authorized in 29 CFR 30.5 (selection on the basis of rank from a pool of eligible applicants, random selection from a pool of eligible applicants, selection from a pool of current employees, or an alternative method); or similar requirements expressed in a State Plan for EEO in Apprenticeship and approved by the Department? X —
- 3. Does the program description include provisions regarding:
 - the employment and training of the apprentice in a skilled trade? X —
 - a term of apprenticeship which is not less than 2,000 hours of work experience and is consistent with training requirements established by industry practice? X —
 - an outline of the work processes in which the apprentice will receive supervised work experience and on-the-job training? X —

- the allocation of approximate time to be spent in each major work process outlined above? X —
- a minimum of 144 hours annually for organized, related and supplemental instruction in technical subjects related to the trade? X —
- a means of approving organized, related and supplemental instruction? X —
- documentation of a progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired? X —
- periodic review and evaluation of the apprentice's progress in job performance and related instruction? X —
- maintenance of appropriate apprentice progress records? X —
- a specific numeric ratio language of apprentices to journeymen consistent with proper supervision, training safety and continuity of employment in terms of job site, work force, department or plant? X —
- a probationary period reasonable in relation to full apprenticeship term (with full credit given for such period toward completion of apprenticeship? X —

- adequate and safe equipment and facilities for supervision, and safety training for apprentices on the job and in related instruction? X —
- minimum qualifications required by a sponsor for persons entering the apprenticeship program (with an eligible age starting at not less than 16 years)? X —
- placement of an apprentice under a written apprenticeship agreement as required by the State apprenticeship law and regulation, or the Bureau where no such State law or regulation exists? X —
- does the agreement directly or by reference, contain the standards of the program as part of the agreement? X —
- the granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally, with commensurate wages for any progression step so granted? X —
- transfer of employer's training obligation when the employer is unable to fulfill

- his obligation under the apprenticeship agreement to another employer under the same program with the consent of the apprentice and apprenticeship committee or sponsor? X —
- assurance of qualified training personnel and adequate supervision on the job? X —
 - recognition for successful completion of apprenticeship evidenced by an appropriate certificate? X —
 - identification of the registration agency? X —
 - provision for the registration, cancellation and deregistration of the program? X —
 - the prompt submission of any modification or amendment to the program? X —
 - the registration of apprenticeship agreements, modifications and amendments? X —
 - notice to the registration office of persons who have successfully completed apprenticeship programs? X —
 - notice of cancellations, suspensions and terminations of apprenticeship agreements and causes therefore? X —

- authority for the termination of an apprenticeship agreement during the probationary period by either party without stated cause? X —
 - a statement that the program will be conducted operated and administered in conformity with the applicable provisions of 29 CFR Part 30, as amended, or a State EEO in apprenticeship plan approved by the Department? X —
 - the name and address of the appropriate authority under the program to receive, process and make disposition of complaints? X —
 - the recording and maintenance of all records concerning apprenticeship as required by the Bureau or recognized State Apprenticeship agency and other applicable law? X —
4. Does the description of the apprenticeship agreement contain:
- names and signatures of the contracting parties (apprentice, sponsor or employer) and parent or guardian if the apprentice is a minor? X —

- date of birth of the apprentice? X —
- name and address of the program sponsor and registration agency? X —
- a statement of the trade or craft in which the apprentice is to be trained? X —
- the beginning date and term (duration) of apprenticeship? X —
- a statement showing the number of hours to be spent by the apprentice in work on the job? X —
- a statement showing the number of hours to be spent in related and supplemental instruction (recommended not to be less than 144 hours per year)? X —
- a statement setting forth a schedule of work processes in the trade or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process? X —
- a statement of the graduated scale of wages to be paid the apprentice and whether or not required school time will be compensated? X —

- a statement providing for a specific period of probation during which the apprenticeship agreement may be terminated by either contracting party upon written notice to the registration agency? X
- a statement providing, after the probationary period, the agreement may be cancelled at the request of the apprentice or may be suspended, cancelled or terminated by the sponsor for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the registration of the final action? X
- a reference incorporating as part of the agreement the standards of the apprenticeship program? X
- a statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training? X
- the name and address of the appropriate authority, if any, designated under the program to receive, process and

make disposition of controversies or differences which cannot be adjusted locally or resolved in accordance with established trade procedure or applicable collective bargaining provisions? X

5. Do the State provisions provide for registration or approval reciprocity when appropriate for apprenticeship programs in other than the building and construction industry upon request? X

V. State Policies and Procedures which Depart from or Impose Requirements in Addition to 29.12

1. Has the SAC clearly identified and explained operating procedures and practices which depart from or impose requirements in addition to 29.12? X

VI. Other Requirements
Reference: 29.12(b)(9), (b)(10)

- A. Does the submittal include provisions for the cancellation, deregistration and/or termination of programs? (see 29.7 and 29.8) X

-are there provisions for the temporary suspension, cancellation, deregistration and/or termination of approval of apprenticeship agreements?

X —

- B. Does the submittal require for the written acknowledgement of union agreement or "no objection" to the program proposed for registration by an employer or employers' association when standards, collective bargaining agreements or other instruments provide for union participation in any manner on the operation of the substantive matters of the Apprenticeship program?

X —

-If no participation by a union in the program is evidenced or practiced, is there provision for the employer (or employers' association) to submit a copy of its application for registration to the union, if any, which is the collective bargaining agent of the employees to be trained and the registration/approval agency?

X —

-Does the agency allow for a period of not less than 30 nor more than 60 days for receipt of union comments, if any, before taking final action on the application for registration/approval?

N/A - See above

EXHIBIT C

U.S. DEPARTMENT OF LABOR
Employment And Training Administration
Washington, D.C. 20213

October 6, 1977

[LOGO]

Mr. Edward W. Wallace
Chief, Division of Apprenticeship
Standards
Department of Industrial Relations
P.O. Box 603
San Francisco, California 94101

Dear Ed:

The Bureau of Apprenticeship and Training (BAT) has completed its review of the documentation submitted for continued recognition under the provisions of Title 29 Code of Federal Regulations Part 29 by the State of California.

The review reveals the necessity for California to amend portions of the Labor Code and to modify and update regulations, agreement form and the manual in order to conform to Title 29 CFR Part 29.

Enclosed is a checklist identifying the deficiencies as found in our careful review. Those areas where deficiencies were found can be identified by the check mark in the "No" column of the checklist. Since the manual and a copy of the agreement were not included in the submission, it is possible that some of the deficiencies, as identified, are covered in these documents.

Of course, there is the possibility that we may have misinterpreted or overlooked something in our review. We stand ready to discuss any item of your submission

that may be in question. Also, the BAT State Director and the District Coordinator for NASTAD, Inc., can be of assistance to you.

Under authority vested in me under 29 CFR § 19.12(c), I am granting an extension of 120 days for updating the rules, regulations and manual to conform, and an extension until the end of the next legislative session for the enactment of any necessary statutory changes. If your State has an Administrative Procedure Act or any law which would prevent compliance with these time periods, please contact me so that alternative periods for compliance can be worked out.

Sincerely,

/s/ Hugh C. Murphy
HUGH C. MURPHY
Administrator
Bureau of Apprenticeship and Training

Enclosure

CALIFORNIA

TITLE 29 CFR PART 29 CHECKLIST FOR STATE RECOGNITION

This Checklist is designed to assist in reviewing the submissions of SCA States for recognition as required under Title 29 CFR Part 29.

YES NO

I. State Apprenticeship Law – And Regulations

References: 29.12(a)(1); 29.12(b)(1)

- | | | |
|--|------------|----------|
| A. Is there evidence of an acceptable State Apprenticeship Law (or Executive Order)? | <u>X</u> | — |
| 1. Is the apprenticeship agency established in: | | |
| – the State Department of Labor | — | <u>X</u> |
| – another State agency having appropriate jurisdiction over laws and regulations governing wages, hours working conditions? | <u>N/A</u> | — |
| – That State agency presently recognized by the Bureau with a State Official empowered to direct the apprenticeship operation. | <u>X</u> | — |

If yes, name the Agency: *Agriculture and Service Agency*

- | | | |
|---|----------|---|
| 2. Does the Law or regulations state that the following are the characteristics of an apprenticesable occupation: | | |
| – it is customarily learned in a practical way through on structured, systematic program of on-the-job supervised training (29.4(a)). | <u>X</u> | — |
| – it is clearly identified and commonly recognized throughout an industry. | — | — |

Unable to find it spelled out

- it involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.

X

- it requires related instruction to supplement the on-the-job training.

X

3. Are there regulations adopted to implement the law (or Executive Order)?

- If yes, what is the effective date of the regulations?

Administrative
Code Title 6
Chapter 2

II. State Apprenticeship Council

References: 29.13(a)2; 29.12 (b)(2), (b)(3), (b4)

- A. Is the composition of the State Apprenticeship Agency/Council acceptable?

X

1. Is there evidence that members are familiar with apprenticeable occupations?

 X

Implied only not specific

2. What is the composition - and voting privilege of the council?

	Number of Voting	
	Num- ber	Mem- bers
- Management Representatives	<u>6</u>	<u> </u>
- Labor Representatives	<u>6</u>	<u> </u>
- Public Representatives	<u>2</u>	<u> </u>
- Education Representatives	<u>2</u>	<u> </u>

- Other (specify):

Director of Industrial Relations 1

Total Representatives 17

The Labor Code is not specific on voting members.

3. Are there ex-officio members on the Agency Councils?

 X

Council has no ex-officio members

4. Are ex-officio members also regular voting members? If not, are there established practices and procedures for ex-offices voting privileges under exceptional circumstances?

 X

Council has no ex-officio members

- B. Are the powers and duties of the Council clearly delineated?

X

- C. Are the powers and duties of the State Official for apprenticeship clearly delineated?

X

- Is the State Official a member of the State Agency/Council?

X

- D. Is the Agency/Council or State Official *clearly* (authorized) to register and deregister apprenticeship programs and agreements?

X

Vague as noted in AC-206

- If yes specify who is authorized:

Director of Industrial Relations

- E. Is the procedure for registration and deregistration described?

X

III. State Plan for Equal Employment Opportunity in Apprenticeship

References: 29.12 (a)(3); 29.12(b)(5); 29 CFR Part 30 as amended.

Is there evidence of an acceptable State Plan for EEO in Apprenticeship? X —

— Is the equal opportunity pledge (30.3(b)) included in the submission? X —

Do the State Provisions establish policy(ies) and procedures to promote EEO in apprenticeship programs pursuant to the State plan? X —

Do the State provisions require apprenticeship programs to operate in conformity with the State Plan? X —

IV. Basic Standards, Criteria, and Requirements for Program Registration

References: 12.12(a)(4); 12.12(b)(6), (b)(7)

Does the description of the basic standards for registration/approval of apprenticeship programs comply with 29.5? X —

1. Does the program description incorporate the terms and conditions of employment, training and supervision of one or more apprentices in the apprenticeable occupation? X —

— Are there provisions for all sponsors of apprentice training programs to comply with the terms and conditions set forth in the program description? X —

2. Does the program description include the equal opportunity pledge prescribed in 29 CFR 30.3(b)? Found in EEO Plan only — —

— When applicable, does the description call for the documentation of an affirmative action plan in accordance with 29 CFR 30.4. A selection method authorized in 29 CFR 30.5 (selection on the basis of rank from a pool of eligible applicants, random selection from a pool of current employees, or an alternative method); or similar requirements expressed in a State Plan for EEO in Apprenticeship and approved by the Department? X —

3. Does the program description include provisions regarding:

— the employment and training of the apprentice in a skilled trade? X —

— a term of apprenticeship which is not less than 2,000 hours of work experience and is consistent with training requirements established by industry practice? X —

— an outline of the work processes in which the apprentice will receive supervised work experience and on-the-job training? X —

— the allocation of approximate time to be spent in each major work process outlined above? X —

- a minimum of 144 hours annually for organized, related and supplemental instruction in technical subjects related to the trade? X —
- a means of approving organized, related and supplemental instructions? X —
- documentation of a progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired? X —
- periodic review and evaluation of the apprentice's progress in job performance and related instruction? X —
Implied in AC.212 only
- maintenance of appropriate apprentice progress records? X —
- a specific numeric ratio language of apprentices to journeymen consistent with proper supervision, training safety and continuity of employment in terms of job site, work force, department or plant? X —
Broad general language - Not specific
- a probationary period, reasonable in relation to full apprenticeship term (with full credit given for such period toward completion of apprenticeship?) X —

Underlined language not included in Labor Code

- adequate and safe equipment and facilities for supervision, and safety training for apprentices on-the-job and in related instruction? X —
- minimum qualifications required by a sponsor for persons entering the apprenticeship program (with an eligible age starting at not less than 16 years)? X —
- placement of an apprentice under a written apprenticeship agreement as required by the State apprenticeship law and regulation, or the Bureau where no such State law or regulation exists? X —
- does the agreement directly or by reference, contain the standards of the program as part of the agreement? X —
Agreement form not submitted with documentation
- the granting of advanced standing or credit for previously acquired experience, training or skills for all

applicants equally, with commensurate wages for any progression step so granted?

X —

- transfer of employer's training obligation when the employer is unable to fulfill his obligation under the apprenticeship agreement to another employer under the same program with the consent of the apprentice and apprenticeship committee or sponsor?

X —

- assurance of qualified training personnel and adequate supervision on-the-job?

X —

Implied only

- recognition for successful completion of apprenticeship evidenced by an appropriate certificate?

X —

- identification of the registration agency?

X —

- provision for the registration, cancellation and deregistration of the program?

X —

- the prompt submission of any modification or amendment to the program?

X —

- the registration of apprenticeship agreements, modifications and amendments?

X —

- notice to the registration office of persons who have successfully completed apprenticeship programs?

X —

- notice of cancellations, suspensions and terminations of apprenticeship agreements and causes therefore?

X —

Information insufficient as submitted except for EEO as as a cause.

- authority for the termination of an apprenticeship agreement during the probationary period by either party without stated cause?

X —

- a statement that the program will be conducted, operated and administered in conformity with the applicable provisions of 29 CFR Part 30, as amended, or

a State EEO in apprenticeship plan approved by the Department?

X —

- the name and address of the appropriate authority under the program to receive, process and make disposition of complaints?

X —

- the recording and maintenance of all records concerning apprenticeship as required by the Bureau or recognized State Apprenticeship Agency and other applicable law?

X —

4. Does the description of the apprenticeship agreement contain:

- names and signatures of the contracting parties (apprentice, sponsor or employer) and parent or guardian if the apprentice is a minor?

X —

Unable to tell without copy of agreement form

- date of birth of the apprentice?

X —

- name and address of the program sponsor and registration agency?

X —

Unable to tell without copy of agreement form.

- a statement of the trade or craft in which the apprentice is to be trained?

X —

- the beginning date and term (duration) of apprenticeship?

X —

Unable to determine without copy of agreement form.

- a statement showing the number of hours to be spent by the apprentice in work on-the-job?

X —

- a statement showing the number of hours to be spent in related and supplemental instruction (recommended not to be less than 144 hours per year)?

X —

- a statement setting forth a schedule of work processes in the trade or industry divisions in which the apprentice is to be trained

and the approximate time to be spent at each process?

X

- a statement of the graduated scale of wages to be paid the apprentice and whether or not required school time will be compensated?

X

- a statement providing for a specific period of probation during which the apprenticeship agreement may be terminated by either contracting party upon written notice to the registration agency?

X

- a statement providing, after the probationary period, the agreement may be cancelled at the request of the apprentice or may be suspended, cancelled or terminated by the sponsor for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the registration of the final action?

X

- a reference incorporating as part of the agreement the standards of the apprenticeship program?

X

Unable to determine without copy of agreement form

- a statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training?

X

- the name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences which cannot be adjusted locally or resolved in accordance with established trade procedures or applicable collective bargaining provisions?

X

5. Do the state provisions provide for registration or approval reciprocity when appropriate for apprenticeship programs in other than the building and construction industry upon request?

 X

Understand a proposed section to council regulations is in process.

V. State Policies and Procedures which Depart from or Impose Requirements in Addition to 29.12

1. Has the SAC clearly identified and explained operating procedures and practices which depart from or impose requirements in addition to 29.12?

— X

Identify

California did not include a copy of the DAS Manual in submission.

VI. Other Requirements

Reference: 29.12(b)(9),(b)(10)

- A. Does the submittal include provisions for the cancellation, deregistration and/or termination of programs? (see 29.7 and 29.8)

— X

DAS Manual not included in submission.

- are there provisions for the temporary suspension, cancellation, deregistration and/or termination of approval of apprenticeship agreements?

— X

DAS Manual not submitted

- B. Does the submittal require for the written acknowledgement of union

agreement or "no objection" to the program proposed for registration by an employer or employers' association when standards, collective bargaining agreements or other instruments provide for union participation in any manner on the operation of the substantive matters of the apprenticeship program?

— X

DAS Manual not submitted

- if no participation by a union in the program is evidenced or practiced, is there provision for the employer (or employers' association) to submit a copy of its application for registration to the union, *if any*, which is the collective bargaining agent of the employees to be trained and the registration/approval agency?

— X

DAS Manual not submitted

- Does the agency allow for a period of not less than 30 or more than 60 days for receipt of union comments, of [sic] any, before taking final action on the application for registration/approval?

— X

DAS Manual not submitted

EXHIBIT D

STATE OF CALIFORNIA - AGRICULTURE AND
SERVICES AGENCY

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
455 GOLDEN GATE AVENUE
SAN FRANCISCO 94102

EDMUND G. BROWN JR., Governor

(Seal)

ADDRESS REPLY TO:

P. O. BOX 603

SAN FRANCISCO, CA 94101

December 16, 1977

Mr. Hugh C. Murphy
Associate Manpower Administrator
Bureau of Apprenticeship and Training
U. S. Department of Labor
Patrick Henry Building, Fifth Floor
601 "D" Street, N.W., Room 5000
Washington, D.C. 20213

Dear Mr. Murphy:

We received from you a 29CFR29 checklist indicating areas which were considered deficiencies.

We have assembled copies of our manual sections, which were recently updated, and other information which we feel support our request for recognition of the California Apprenticeship Council by the Secretary of Labor.

The following is our response to the items checked in the "No" column of the checklist:

1. Pg. 1, I.A.1. Copy of the chaptered version of AB 505, Thurman. See Sec. 9.

2. Pg. 2, I.A.2. Manual Section 610.03.
3. Pg. 3, II.A.1. Roster of Council Members, listing their affiliations.
4. Pg. 4, II.A.3 & 4. The Council has no non-voting ex-officio members. There are three members who serve by virtue of their position: 1) the Director of Industrial Relations, 2) the Superintendent of Public Instruction or his designee, and 3) the Chancellor of the California Community Colleges or his designee. See Labor Code Section 3070 attached.
5. Pg. 6, IV.2. Pledge is included in Addendum to Standards. (DAS Forms 167 and 167B) See Manual Section 730.07.
6. Pg. 14, IV.5. Section 206(b), Administrative Code, adopted July 29, 1977, effective September 17, 1977. See attached Information Bulletin No. 77-7.
7. Pg. 14, V.1. The California Apprenticeship Council, under authority of Labor Code Section 3071, is required to establish standards for minimum wages, maximum hours, and working conditions. Also, see California Administrative Code, Title 8, Chapter 2, Article 3, Section 208 attached.
8. Pg. 14, VI.A. Manual Sections 610.07, 610.11, 710.15, and 610.17.
9. Pg. 15, VI.A. See Labor Code Section 3078 (g).
10. Pg. 15, VI.3. See DAS 36, Item #15, written acknowledgement of union agreement. Also see Labor Code Section 3079 and

Administrative Code Sections 218, 219, and 220.

11. Pg. 15, VI.B. Although neither the Labor Code nor the Administrative Code of the State of California provide for a specified period of time for receipt of union comments, if any, before taking final action on an application for registration or approval, we feel the language mentioned above provides sufficient safeguards for union comments. In order to expedite the approval of continued recognition of the State of California under the provision of Section 29, Code of Federal Regulations, Part 29, we request that the language contained in the above-referenced material (Item No. 10) be accepted.

Sincerely,

/s/ Edward W. Wallace
EDWARD W. WALLACE
Chief

EWV:CHG:ct
Attach.

cc: William R. Shuck, NASTAD, Inc.
Kenneth C. Pittman, NASTAD, Inc.
Norris E. Skinner, BAT

EXHIBIT E
CALIFORNIA
STATE APPRENTICESHIP COUNCIL REVIEW

The review was conducted by David G. Turner, Regional Director, and Jerry G. Tabaracci, California BAT State Director on August 13, 1990. We met with Gail Jesswein, Chief, Division of Apprenticeship Standards.

The BAT State Director and staff reviewed some of the records in local DAS offices to assist in the review.

SAC REVIEW CHECKLIST

Part I

1. **IS THERE AN ACCEPTABLE STATE APPRENTICESHIP LAW (OR EXECUTIVE ORDER) AND REGULATIONS ADOPTED PURSUANT THERETO?**

(REFERENCE: TITLE 29 CFR PART 29.12 (a) (1))

Yes. The State of California has a law (Apprenticeship Law in California - Shelley/Maloney Apprentice Labor Standards Act of 1939) and State Apprenticeship Regulations (California Administrative Code Title 8, Chapter 2, Part 1 - Apprenticeship). It is my opinion that the apprenticeship law and state regulations are acceptable under the criteria specified in Title 29 CFR 29. It should be noted however, that the issue of so called "parallel programs" creates a situation within the state that makes it difficult for potential sponsors to secure timely approval of their program, if a similar program already exists for the occupation/trades proposed. Two years or more is not uncommon before final approval is granted.

The current situation related to this issue is of the magnitude to be of concern to BAT in light of our stated position of fair and equitable treatment to all sponsors or potential sponsors. While it can be shown that this is not solely a union vs non-union issue, the greatest impact is on programs proposed by non-union sponsors.

2. IS THE COMPOSITION OF THE SAC ACCEPTABLE?

(REFERENCE: TITLE 29 CFR PART 29.12 (a) (2))

Yes. The California Apprenticeship Council (CAC) is composed of six (6) representatives from employers, six (6) representatives from employee organizations, two (2) representatives from the general public and three (3) ex-officio members representing the Director of the Department of Industrial Relations, Superintendent of Public Instruction, and the Chancellor of the California Community Colleges. The three ex-officio members may appoint his or her permanent and best qualified designee to sit on the Council in their place.

The Governor, by law, has the authority to appoint the Council members, except for the ex-officio members.

3. IS THERE AN ACCEPTABLE STATE PLAN FOR EEO IN APPRENTICESHIP?

(REFERENCE: TITLE 29 CFR PART 29.12 (a) (3))

Yes. The State of California Plan for Equal Opportunity in Apprenticeship was adopted to meet the requirements of Title 29 CFR Part 30. The state plan is nearly identical to the federal regulation, except were [sic] it must conform

to existing California State Law. The Department of Fair Employment and Housing has the authority to investigate and render decisions on all EEO complaints, including apprenticeship under California State Law.

4. IS THERE A DESCRIPTION OF THE BASIC STANDARDS CRITERIA, AND REQUIREMENTS FOR PROGRAM REGISTRATION AND/OR APPROVAL?

(REFERENCE: TITLE 29 CFR PART 29.12 (a) (4))

Yes. The California Code of Regulations (CCR), Title 8, Chapter 2, Part, 1 Article 4, Section 212, contains the basic standards criteria required for approval. See attached copy of the CCR.

5. IS THERE A DESCRIPTION OF POLICIES AND OPERATING PROCEDURES WHICH DEPART FROM OR IMPOSE REQUIREMENTS IN ADDITION TO THOSE PRESCRIBED IN TITLE 29 CFR PART 29?

(REFERENCE: TITLE 29 CFR PART 29.12 (a) (5))

Yes. It is my opinion that Title 8, Chapter 2, Part 1, Article 4, Section 212.2 does establish a policy and operating procedure which is in addition to those prescribed in Title 29 CFR 29. While it can be argued that so called "parallel programs" eventually get approved by the Division of Apprenticeship Standards (DAS), it is also clear that there is a significant time delay in California's apprenticeship program approval process due to this California Regulation provision. It should be noted that the position of

DAS is that this Section of the California Code of Regulations is not in conflict with Title 29 CFR 29.

6. **IS THE APPRENTICESHIP AGENCY ESTABLISHED IN THE STATE DEPARTMENT OF LABOR, OR THE STATE AGENCY HAVING JURISDICTION OF LAWS AND REGULATIONS GOVERNING WAGES, HOURS, AND WORKING CONDITIONS, OR THAT STATE AGENCY RECOGNIZED BY THE BUREAU IN FEBRUARY 1977 WITH A STATE OFFICIAL EMPOWERED TO DIRECT THE APPRENTICESHIP OPERATION?**

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (1))

Yes. DAS is in the Department of Industrial Relations (DIR), and DIR is responsible for the administration and enforcement of all state labor laws. The Chief of DAS is empowered to direct the apprenticeship program within the state. (See California Labor Code (CLC), Apprenticeship Law in California Section 3073).

7. **IS THE STATE APPRENTICESHIP COUNCIL (SAC) COMPOSED OF PERSONS FAMILIAR WITH APPRENTICEABLE OCCUPATIONS AND AN EQUAL NUMBER OF REPRESENTATIVES OF EMPLOYER AND EMPLOYEE ORGANIZATIONS?**

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (2))

Yes. Neither the apprenticeship law nor administrative code requires that persons appointed to the California Apprenticeship Council (CAC) be familiar with apprenticeship occupations. Equal numbers of management and

labor representatives sit on the CAC, six from each group. The Governor, as a matter of past practice, has endeavored to appoint individuals to the CAC that have a strong interest in the apprenticeship system and represent various industrial groups.

8. **IS THERE CLEAR DELINEATION OF THE RESPECTIVE POWERS AND DUTIES OF THE STATE OFFICIAL AND THE COUNCIL?**

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (3))

Yes. The current operating procedures are clear as to what responsibilities are the CAC's and which duties fall within the jurisdiction of DAS.

The CAC is actually tripartite in that it is regulatory, advisory, and the appellant body in matters of appeal relating to decisions or actions taken by DAS. The Chief of DAS is responsible for the daily operation of the agency and adherence to applicable apprenticeship laws and regulations. (See CLC, Apprenticeship Law in California Section 3073).

9. **IS THERE A CLEAR DESIGNATION OF OFFICER OR BODY AUTHORIZED TO REGISTER OR Deregister APPRENTICESHIP PROGRAMS AND AGREEMENTS?**

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (4))

Yes. DAS has the authority to approve programs. (See CLC, Chapter 4, Section 3075 & 3090). The deregistration authority is not clear, but as a matter of internal policy

and operating procedure, DAS believes it has the authority to take deregistration action if necessary.

Apprenticeship agreements are approved by JAC's or by the administrator where no collective bargaining agreement exists. The agreements are then submitted to DAS for registration. (See CLC, Sec. 3078, 3079 and 213 of the CCR.)

10. ARE THERE POLICIES AND PROCEDURES ESTABLISHED TO PROMOTE EQUALITY OF OPPORTUNITY IN APPRENTICESHIP PURSUANT TO A PLAN FOR EEO IN APPRENTICESHIP WHICH ADOPTS AND IMPLEMENTS REQUIREMENTS OF TITLE 29 CFR PART 30 AND REQUIRES APPRENTICESHIP PROGRAMS TO OPERATE IN THE CONFORMITY WITH SUCH STATE PLAN?

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (5))

Yes. The CAL Plan (EEO Plan for Apprenticeship) is the policy and operating procedure for DAS relating to EEO in apprenticeship for California. (See Appendix CCR, Title 8, Chapter 2, Part 1, Section 215.)

11. DOES THE SAC ASSURE, WHERE APPROPRIATE, THAT SPONSORS ARE DETERMINING THE NECESSITY FOR GOALS AND TIMETABLES BASED UPON PROPER ANALYSIS?

(REFERENCE: TITLE 29 CFR PART 30.4 (e))

Yes. Program sponsors are required to do an analysis to determine if goals and timetables are appropriate. If the sponsor needs assistance or declines to do the analysis,

then DAS staff performs this function for the program sponsor. (See CAL Plan, Affirmative Action [e], Pg. 9.)

12. DOES THE SAC ASSURE THAT, WHERE APPROPRIATE, SPONSORS ESTABLISH GOALS AND TIMETABLES ON THE BASIS OF ANALYSES OF UNDER-UTILIZATION OF MINORITIES AND WOMEN AND ITS ENTIRE AFFIRMATIVE ACTION PROGRAM?

(REFERENCE: TITLE 29 CFR PART 30.4 (f))

Yes. Program sponsors are required to establish goals and timetables if the analysis determines this is appropriate. If the sponsor fails to establish the appropriate goals and timetables, then DAS staff establishes the goals/timetables. As a matter of past practice, DAS staff generally establishes the goals and timetables for all appropriate program sponsors. (See CAL Plan, Affirmative Action [f], Pg. 10.)

13. DOES THE SAC CONDUCT TIMELY AND COMPLETE EEO COMPLIANCE REVIEWS OF STATE REGISTERED PROGRAMS INCLUDING DETERMINATION IF A SPONSOR HAS MET ITS GOALS WITHIN TIMETABLES OR WHETHER IT HAS MADE GOOD FAITH EFFORTS?

(REFERENCE: TITLE 29 CFR PART 30.4 (f))

Yes. Compliance reviews are conducted annually on all programs with five or more apprentices, except for programs operating under court order or consent decrees. Programs granted exemptions from the state EEO apprenticeship plan, such as Federal facilities are not reviewed

for compliance. A compliance determination is made annually by DAS for each program specifying the nature of compliance, whether good faith effort or from having met the goals. As necessary, DAS sends corrective action letters to appropriate program sponsors as one way of encouraging greater EEO effort on the part of program sponsors.

14. DOES THE SAC DE-REGISTER FOR NON-COMPLIANCE WITH EEO IN APPRENTICESHIP REQUIREMENTS AND NOTIFY BAT OF SUCH ACTIONS?

(REFERENCE: TITLE 29 CFR PART 30.15 (a) (5))

Yes. While DAS has not deregistered any programs for non-compliance with EEO regulations they have the authority to do so and have agreed to notify BAT if such action becomes necessary.

15. DOES THE SAC MAINTAIN RECORDS?

(REFERENCE: TITLE 29 CFR PART 30.8 (d) & (e))

Yes. A review of the records maintained by DAS indicates that adequate data is maintained on both apprentices and programs. The record keeping system is computerized. Due to the earthquake there was a delay in getting some statistical data from DAS for a period of time, but that problem has now been resolved. DAS does not participate in AMS. The official files are maintained in the District offices, with duplicate files held at DAS headquarters.

16. DOES THE SAC PROVIDE RECORDS AND DOCUMENTS TO BAT PERTINENT TO TITLE 29 CFR PARTS 29 & 30 WHEN REQUESTED?

(REFERENCE: TITLE 29 CFR PART 30.8 (d) & (e))

Yes. DAS has been very cooperative in supplying requested information/data to BAT whenever requested to do so.

17. ARE THE CONTENTS OF APPRENTICESHIP AGREEMENTS PRESCRIBED?

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (6))

Yes. The contents of the agreement are prescribed in CLC, Sec. 3078, pages 9 & 10. (See 3078 a through k.)

18. IS THE REGISTRATION OF APPRENTICESHIP PROGRAMS LIMITED TO THOSE PROVIDING TRAINING IN "APPRENTICEABLE" OCCUPATIONS AS DEFINED IN TITLE 29 CFR PART 29.4?

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (7))

Yes. Programs under consideration for registration must meet the criteria established in the CCR, Title 8, Chapter 2, Part 1, Art. 2, 205 (c) and (e). This is similar to Title 29 CFR 29, 29.4, but does not include Part (b) "identified and recognized by industry." DAS has indicated that while their law/administrative code does not address the "industry recognition" requirement, as a matter of policy and operating procedure, they do survey industry prior to recognizing new occupations. Recently DAS recognized several occupations for a program sponsored by the Laborers and a group of signatory contractors which

ended up becoming involved in a jurisdictional dispute with other existing program sponsors. This program was withdrawn by the sponsor during the appeals process.

19. **IS REGISTRATION OR APPROVAL RECIPROCITY, GRANTED, IF REQUESTED, TO APPRENTICESHIP PROGRAMS AND STANDARDS OF EMPLOYERS AND UNIONS WHICH JOINTLY FORM A SPONSORING ENTITY ON A MULTI-STATE BASIS IN OTHER THAN THE BUILDING AND CONSTRUCTION INDUSTRY?**

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (8))

Yes. An acceptable reciprocity statement is contained in the CCR, Title 8, Chapter 2, Part 1, Art. 4, Sec. 212.1. This does not appear to be a problem area. Recently DAS granted reciprocity recognition to the National Fire Fighters program.

20. **IS THERE PROVISION FOR CANCELLATION, DE-REGISTRATION, AND/OR TERMINATION OF APPROVAL OF PROGRAMS, AND FOR TEMPORARY SUSPENSION, CANCELLATION, DE-REGISTRATION AND/OR TERMINATION OF APPROVAL OF APPRENTICESHIP AGREEMENTS?**

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (5))

Yes. If there is an EEO violation involved. However, neither the law nor administrative code is specific on the issue of program cancellation or deregistration. DAS does cancel programs that are inactive and has indicated that they will initiate action to deregister a program for cause,

following the procedures outlined in the CCR, Title 8, Chapter 2, Part 1, Art. 1, Sec. 201, 202, and 203. The cancellation of apprenticeship agreements is found in CCR, Title 8, Chapter 2, Part 1, Art. 4, Sec. 213.

21. **IS THERE PROVISION FOR WRITTEN ACKNOWLEDGEMENT OF UNION AGREEMENT OR "NO OBJECTION" TO REGISTRATION WHEN A PROGRAM IS PROPOSED FOR REGISTRATION BY AN EMPLOYER OR EMPLOYER'S ASSOCIATION AND WHERE THE STANDARDS, COLLECTIVE BARGAINING AGREEMENT OR OTHER INSTRUMENT PROVIDES FOR PARTICIPATION BY A UNION IN ANY MANNER IN THE OPERATION OF THE SUBSTANTIVE MATTERS OF THE APPRENTICESHIP PROGRAM AND SUCH PARTICIPATION IN [sic] EXERCISED?**

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (10))

Yes. The language in the CLC is not the same as what is contained in Title 29 CFR 29, but I believe the intent and basic safeguards are addressed. DAS operating procedures and policy will not permit the registration of a unilaterally sponsored program if there is a bargaining agreement in place. (See CLC, Sec. 3075, Pg. 7.)

22. UNDER THE CONDITIONS INDICATED IN # 21 ABOVE WHERE NO SUCH PARTICIPATION IS EVIDENCED AND PRACTICED, IS THE UNION, IF ANY, WHICH IS THE COLLECTIVE BARGAINING AGENT, FURNISHED A COPY OF THE APPLICATION FOR REGISTRATION AND OF THE APPRENTICESHIP PROGRAM?

(REFERENCE: TITLE 20 CFR PART 29.12 (b) (10))

Yes. DAS has stated that they would provide a copy of any proposed program to the bargaining agent and request their comments, before acting on the request for approval/recognition. Neither the CLC nor CCR specifically requires such action by DAS.

23. UNDER THE CONDITIONS OF # 21 & # 22 ABOVE, DOES THE STATE AGENCY PROVIDE A PERIOD OF NOT LESS THAN 30 DAYS NOR MORE THAN 60 DAYS FOR RECEIPT OF UNION COMMENTS BEFORE FINAL ACTION ON THE APPLICATION?

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (10))

No. The law does not address this issue as it relates to timeframes for comments. DAS has indicated that they would, as a matter of operating procedure, allow at least 30 days for comment before acting on any request for registration from a sponsor subject to a bargaining agreement.

In my opinion this is not an area of concern, in light of the past operating procedure of DAS.

24. DOES THE SAC REQUIRE FOR APPROVAL/REGISTRATION THAT APPRENTICESHIP PROGRAMS CONFORM TO EACH OF THE STANDARDS OF APPRENTICESHIP AS PROVIDED IN TITLE 29 CFR PART 29 (29.5)?

(REFERENCE: TITLE 29 CFR PART 29.12 (b) (10))

Yes. A review of the CLC, CCR and the DAS form 51 (Boilerplate Standards) indicate that all 22 items required by Title 29 CFR 29 - 29.5 are included in DAS's operating procedures and policies. Programs that do not include the necessary provisions/statements would not likely be approved by DAS.

NOTE: All items checked "NO" should be thoroughly addressed in the accompanying narrative report submitted to the BAT Director.

MANAGEMENT REVIEW OF SAC OPERATIONS

Part II

I. ADMINISTRATIVE

- A. LIST CURRENT COUNCIL MEMBERS, THEIR AFFILIATION AND THE AREAS THEY REPRESENT (LABOR, MANAGEMENT, PUBLIC).

See attached listing of the current members of the California Apprenticeship Council.

- B. HOW OFTEN DOES THE COUNCIL MEET AND WHEN WAS THE LAST MEETING?

The CAC meets quarterly, the last two days of the last full week for the months of January, April, July and October. The meetings are held at various locations throughout the state. The last meeting was held

in San Francisco, California on July 26 & 27, 1990.

C. BRIEFLY DESCRIBE THE DUTIES OF THE COUNCIL.

See attached "Obligations and Duties of the Council."

D. WHAT IS THE ROLE OF THE COUNCIL, ADVISORY OR REGULATORY?

The CAC is actually tripartite in that it serves as regulatory, advisory and as an appellate body on matters of appeal. (See CLC 3070, 3071 & 3073.)

E. GIVE THE NAME AND TITLE OF THE ADMINISTRATIVE HEAD OF THE OPERATING STAFF OF THE STATE APPRENTICESHIP AGENCY.

The DAS Chief is Gail W. Jesswein. He also serves as the Secretary to the CAC.

F. BRIEFLY DESCRIBE THE DUTIES OF THE STATE OPERATING STAFF.

The staff of DAS promotes and develops new apprenticeship programs, provides consulting services, promotes EEO, enforces related public works law, conducts compliance reviews and all other duties normally associated with the work of apprenticeship representatives.

G. PROVIDE THE NUMBER AND TYPE OF STATE POSITIONS DEVOTED TO APPRENTICESHIP. INDICATED THE PERCENTAGE OF TIME DEVOTED TO APPRENTICESHIP IF POSITIONS HAVE OTHER RESPONSIBILITIES.

There is a total of 59 professional staff and 45 support staff positions. The breakout is shown below:

- 6 Managers
- 11 Supervisors
- 41 Consultants
- 1 Attorney
- 45 Clerical

DAS staff devotes time to apprenticeship activities, public works enforcement, VA approval, and OJT activities.

The breakout of the time devoted to each activity is shown below:

- 92.6% Apprenticeship Activity
- 5.4% Public Works Enforcement
- 2.0% VA Approval & OJT Activity

H. WHAT IS THE DOLLAR AMOUNT OF THE STATE APPRENTICESHIP BUDGET?

The budget for DAS for FY 90/91 is \$5.834 million, but this was not provided to DIR in this FY's appropriation. Currently, DIR is funding DAS out of the general DIR budget. Efforts are underway to establish some type of self funding fee system. The current situation is very serious and the lack of funding for DAS may become critical before the end of the FY.

I. DESCRIBE THE OPERATING WORK LOAD DIVISION BETWEEN THE SAC AND BAT, E.G., GEOGRAPHICALLY, BY INDUSTRY OR TRADE.

There are no geographical, industry or trade divisions used in determining the assignment of workload to DAS/BAT staff. The number of programs assigned to BAT and DAS staff is shown below:

BAT - Programs	33	Apprentices	3,099
DAS - Programs	1,563	Apprentices	47,663

J. INDICATE THE TYPE OF WORK DONE BY SAC STAFF AND THE TYPE DONE BY BAT STAFF, E.G., DO BOTH BAT AND SAC DEVELOP, SERVICE, AND MAKE EEO REVIEWS?

The staff of both agencies (BAT/DAS) perform similar duties except that DAS staff is responsible for VA and OJT approval, plus State Public Works Enforcement. BAT staff is not currently involved in these activities. Otherwise, both agencies' staffs provide service, promote and develop programs and conduct compliance reviews (EEO).

K. IS THERE A CURRENT WRITTEN COOPERATIVE OPERATIONAL POLICY BETWEEN BAT/SAC?

Yes. A cooperative working agreement was signed between BAT/DAS on February 24, 1986. This agreement is still in place and utilized by the two agencies as necessary.

II. DATA COLLECTION

A. WHAT IS THE TOTAL NUMBER OF ACTIVE PROGRAMS AND APPRENTICES REGISTERED BY THE STATE?

The following statistical data was provided by DAS. The data is as of June 30, 1990.

Total Apprentices	50,762
Total Programs Single Plant	1,075
Total Group Programs	521

B. IS THE STATE'S DATA COLLECTION SYSTEM AUTOMATED?

Yes. The DAS data collection system is automated. Program and individual apprentices data is collected under the current system.

C. INDICATE THE NUMBER OF PROGRAMS AND APPRENTICES IN THE WORK LOAD OF THE SAC STAFF AND IN THE WORK LOAD OF THE BAT STAFF.

The number of programs and apprentices serviced by DAS and BAT staff are shown below:

BAT Programs	33	Apprentices	3,099
DAS Programs	1,563	Apprentices	47,663

D. HOW MANY NEW PROGRAMS WERE REGISTERED BY THE STATE IN THE LAST 12 MONTHS?

A total of 123 new programs were registered in the last 12 months (7/1/89 to 6/30/90).

E. HOW MANY PROGRAMS WERE DE-REGISTERED IN THE LAST 12 MONTHS?

DAS has not deregistered any programs in the last 12 months. Inactive programs are cancelled on an "as needed" basis.

F. HOW MANY PROGRAMS WERE CONSIDERED FOR REGISTRATION DURING THE LAST 12 MONTHS THAT WERE DENIED REGISTRATION?

DAS has not denied registration to any program in the last 12 months. Six programs approved by DAS are under appeal to the CAC. DAS program approvals are subject to review by the CAC through the appeals process. The CAC has the authority to overturn the DAS approval/recognition.

III. POLICY

A. FOR THOSE PROGRAMS DE-REGISTERED IN THE LAST 12 MONTHS, WHAT WERE THE SPECIFIC REASONS FOR DE-REGISTRATION IN EACH CASE?

DAS has not deregistered any programs in the last 12 months.

B. FOR THOSE PROGRAMS CONSIDERED FOR REGISTRATION DURING THE LAST 12 MONTHS THAT WERE DENIED REGISTRATION, WHAT WERE THE SPECIFIC REASONS FOR DE-REGISTRATION IN EACH CASE?

DAS has not denied registration to any programs within the past 12 months. However, six programs approved by DAS have had their DAS approval

appealed to the CAC. The CAC may overturn the DAS approval on any or all of the programs currently before them.

C. WHAT OCCUPATIONS, IF ANY, ARE RECOGNIZED BY THE STATE AS APPRENTICEABLE WHICH BAT DOES NOT RECOGNIZE?

There are a substantial number of occupations recognized by DAS that are not BAT approved. (See attached listing of these occupations.)

Part of the problem with some of the occupations recognized by DAS is that the DOT numbers utilized to identify these occupations include the use of letters for the last digit. This causes them to be different than the DOT number used by BAT. If DAS would use only approved/recognized DOT numbers I believe there would be less confusion and fewer differences between what BAT has approved and what DAS has recognized.

D. HAS THE STATE REFUSED TO RECOGNIZE ANY OCCUPATIONS RECOGNIZED BY BAT AS APPRENTICEABLE? IF SO, NAME AND GIVE THE REASONS FOR REFUSAL.

DAS has refused to approve/recognize one BAT approved occupation, Bartender.

E. DOES THE STATE RECOGNIZE PROGRAMS REGISTERED IN OTHER STATES?

Yes. DAS has recognized programs registered in another state through a Memorandum of Understanding, such as the Tahoe Agreement between California and Nevada. DAS staff informed me that the

reciprocity provision could be used if a Memorandum of Understanding did not exist. (See Title 8, Chapter 2, Part 1, Art. 4, Sec. 212.1 of the CCR.)

F. DOES THE STATE HAVE A LITTLE DAVIS-BACON ACT?

Yes. The State of California does have a little Davis/Bacon Law. (See attached copy of the Laws and Regulations Governing the Payment of Prevailing Wages.)

G. HAVE ANY SIGNIFICANT CHANGES BEEN MADE IN THE STATE APPRENTICESHIP POLICIES OR PROCEDURES SUBSEQUENT TO RECOGNITION APPROVAL BY THE SECRETARY? IF SO, WHAT WERE THEY AND WERE THEY SUBMITTED TO BAT FOR REVIEW AND COMMENTS?

Yes. A summary of those changes was submitted with the 1988 California SAC Review. Since then there has been one major change that could have significant impact. In this year's state budget process, the Department of Industrial Relations did not receive funding for DAS. The legislature then passed Bill AB 116 which permitted the Director of DIR to establish a "fee system" for apprenticeship, which in theory, would make DAS self funded. The Governor signed that Fee System Bill into law. DIR is now going through the process of setting a regulatory process to implement a fee system for apprenticeship. There is widespread concern within the apprenticeship community related to this proposed fee system and considerable speculation that it will not generate sufficient revenue to save DAS. Currently DAS is being funded from the general appropriations provided to DIR. Information provided by DAS staff indicates that the commitment to fund DAS from

DIR's general appropriation may be limited to the end of December 1990. In my opinion, this proposed fee system will not work and further we can expect to see upwards of 50% of the current program sponsors drop their programs with DAS if and when the fee system is implemented. There may be considerable confusion over the next few months as DAS and DIR struggle to resolve the problems facing the continuation of DAS and a state operated apprenticeship system. The possibility exists that BAT may be required to assume the responsibility for apprenticeship in California, if the problems facing DAS are not resolved in the near future. It appears to me, that BAT will need to assess very carefully the implementation of a fee system for apprenticeship in California and determine if it is the Department of Labor's best interest to continue recognition of California, if the fee system has a negative impact on programs and apprentices.

H. ARE THERE ANY STATE POLICIES OR PROCEDURES THAT LIMIT THE ACCESSIBILITY OF ANY POTENTIAL SPONSORS TO THE APPRENTICESHIP SYSTEM? IF SO, EXPLAIN.

Yes. This same question has been addressed in past reviews and it is still my opinion that Title 8, Chapter 2, Part 1, Art. 4, Section 212.2 of the CCR is limiting access to potential sponsors. The significant sentence of administrative code 212.2, is "approval shall be denied if prevailing conditions would in any way be lowered or adversely affected."

While so called "parallel programs" have been approved by DAS, the time delay, in the approval process, can be and is often extremely long. When you add the CAC's appeals process to DAS's review

and approval process, you find some potential programs still awaiting final approval after two years. Then you have court action, initiated by the existing program sponsor, on top of the agency's review, approval and appeals process.

Several programs are in various stages of the review, approval or appeals process within the so called "parallel program" issue. One parallel program has succeeded in maintaining DAS recognition through a California District Court, but that decision has been appealed by existing program sponsors, so the issue is still not resolved. It appears that this situation will remain unchanged for a significant period of time. I do not see any resolution of the problem in the foreseeable future, unless DAS should fail to find a way out of the budget mess they are currently in and simply cease to exist. Should that happen, then BAT would have to assume the responsibility for registration of programs and apprentices and the so called "parallel program" issue would cease to be an issue in California so far as BAT is concerned.

EXHIBIT F

STATE OF CALIFORNIA
COOPERATIVE WORKING AGREEMENT
FOR THE
DIVISION OF APPRENTICESHIP STANDARDS
AND
BUREAU OF APPRENTICESHIP AND TRAINING
PREAMBLE:

The Bureau of Apprenticeship and Training and the Division of Apprenticeship Standards have the responsibility

to work as complimentary units to promote, develop, and maintain both apprenticeship and other on-the-job training systems. This responsibility is necessary in order to carry out the provisions of Public Law 308 (Fitzgerald Act); the California Apprenticeship Law (Shelley-Maloney Apprentice Labor Standards Act of 1939, Chapter 4, Division 3, Labor Code of California); and Title 8, Chapter 2, California Administrative Code. Each agency shall maintain its own identity, but will perform similar work in a like manner to accomplish these objectives.

COMMITTEE:

There shall be established a committee, hereinafter referred to as "The DAS/BAT State Coordination Committee," composed of the Chief and the Deputy Chief, Division of Apprenticeship Standards, and the Regional and State Directors of the Bureau of Apprenticeship and Training. It shall be the function of this Committee to:

1. Select a Chairman and a Secretary; one of whom shall be from each agency. The Chairman and Secretary shall rotate between agencies annually.
 - (a) The full committee shall constitute a quorum.
2. Hold at least one regular meeting a year and special meetings at the call of either agency solely for the purpose of discussing this working agreement, to make certain that the full intent and purpose of the provisions are being fully adhered to.

3. Hold such other meetings as may be necessary for the Committee to develop procedures for promotional activities [sic] and improvements of apprenticeship and other on-the-job training in all industries.
4. Keep written records of each meeting and distribute a copy of same to all members.
5. All decisions shall be binding upon both parties subject to an appeal to the next higher authority of each agency.
6. Discuss and make recommendations on methods of improving and expanding apprenticeship and training in the State of California

STATEWIDE COMMITTEE ASSIGNMENTS:

The Committee shall review, from time to time, present State Committee assignments. This list shall be kept up to date and, when necessary, the Chief of the Division of Apprenticeship Standards shall make reassignments in consultation with the State Director of the Bureau of Apprenticeship and Training. Only one assigned representative will service a State Committee.

ESTABLISHMENT OF NEW DISTRICT OR LOCAL OFFICES

The Division of Apprenticeship Standards shall have the prerogative to establish new District or Local Offices and assign personnel. The Bureau of Apprenticeship and Training shall have the prerogative to establish, close or relocate field offices in California, but agrees to consult

with the Chief the Division of Apprenticeship Standards prior to the implementation of any changes.

WORKING PROCEDURES:

Working procedures will be developed by this Committee where necessary. Working procedures shall define:

1. Working assignments including geographical area of assignment.
 - (a) Service
 - (b) Promotion
 - (c) Special Assignments
2. Cooperation

It is recognized that each agency may, from time to time, receive directives that require contacting industry and trades not assigned or travel from one district or area to another in carrying out said directives. When such is the case, these special activities will be communicated to the other agency. All BAT-DAS representatives' activities which do not come within the scope of these agency directives will be confined to their local work assignments. All papers, reports, requests, etc., having to do with a certain assignment shall be channeled through the representative having that assignment.

SUPERVISION:

It is understood that supervision of the staff of the Bureau of Apprenticeship and Training rests with the State Director of the Bureau of Apprenticeship and Training, and supervision of the staff of the Division of Apprenticeship

Standards rests with the Chief of the Division of Apprenticeship Standards and his authorized representatives.

LIAISON:

The Division of Apprenticeship Standards will keep the Bureau of Apprenticeship and Training informed of all policies and procedures adopted by the California Apprenticeship Council. The Bureau of Apprenticeship and Training will keep the Division of Apprenticeship Standards informed of all policies and procedures adopted by the Bureau of Apprenticeship and Training. This information shall flow through the Headquarters office of each agency. It is agreed that all operations in apprenticeship will be governed by State law and rules and regulations of the California Apprenticeship Council and for federal purposes, the Federal apprenticeship regulations.

APPRENTICESHIP STANDARDS:

In the development of new apprenticeship standards, or the revision of existing apprenticeship standards, there shall be included a provision for an advisor to the Apprenticeship Committee from the Division of Apprenticeship Standards or the Bureau of Apprenticeship and Training. All new registered apprenticeship programs shall be consistent with the provisions of state law and regulation.

SURVEYS:

Surveys and other like assignments made in any industry or area shall be conducted after consultation of the parties.

PROMOTIONAL EFFORTS:

In order to increase the number of apprentices as well as to improve the existing apprenticeship programs, plans for the following will be developed.

1. Apprenticeship goals by major industries.
2. Apprenticeship linkage with target populations.
3. Staff development training.
4. Promotion of equal employment opportunity for minorities and women consistent with the California Plan for Equal Opportunity in Apprenticeship.
5. Improvement of the quality of apprenticeship training both on the job and in related, supplemental instruction.

PUBLICITY AT ALL LEVELS:

Steps shall be taken by the representatives of both agencies to see that favorable publicity is obtained for the California Apprenticeship program.

COMPLETION CEREMONIES:

It is the policy of both agencies to aid and assist Labor and Management in the promotion of mass or individual

occupation completion ceremonies. Representatives of both agencies shall work jointly on such general ceremonies when their assignments include one or more participating Program Sponsor. Where there is no representative of the other agency assigned, efforts will be made to have the State Headquarters of the agencies receive an invitation to participate in the ceremonies.

APPRENTICESHIP CERTIFICATES:

Apprenticeship Completion Certificates shall be awarded by a member of the California Apprenticeship Council or by a staff member of the Division of Apprenticeship Standards or Bureau of Apprenticeship and Training to completing apprentices upon the request of the program sponsors, except for Federally registered programs. California completion certificates will be issued in California unless the Division of Apprenticeship Standards authorizes the issuance of Bureau of Apprenticeship and Training certificates.

JOINT TRAINING CONFERENCES:

Training conferences will be held and conducted jointly. These conferences shall be planned by staff of the Division of Apprenticeship Standards and appropriate representatives of the Bureau of Apprenticeship and Training. When necessary, time shall be allotted so that each agency may meet separately to discuss problems which are of interest only to that agency.

All other business shall be postponed insofar as possible so that conference sessions and committee meetings may be held without interruption and with full attendance.

LOCAL STAFF ASSIGNMENTS:

Written staff assignments regarding consultative services to Program Sponsors will be made by the responsible Senior Apprenticeship Consultant in consultation with the Area Administrator. Assignment proposed for Bureau of Apprenticeship and Training staff shall have the approval of the Bureau of Apprenticeship and Training California State Director. Fully trained staff of both agencies will share an equal workload assignment for this activity. If there is a dispute over local Program Sponsor assignments, the recommendations from both agencies will be sent forward to the State DAS/BAT Coordination Committee for resolution.

LOCAL STAFF MEETINGS:

Division of Apprenticeship Standards Senior Consultants will conduct staff meetings on a regular schedule. Staff of both agencies assigned to the local areas are expected to regularly attend these meetings.

The Senior Consultant will write the Bureau of Apprenticeship and Training Field Representative for their input regarding agenda items.

MISUNDERSTANDINGS:

If a misunderstanding arises between BAT-DAS representatives, the following procedure shall be followed in the settlement of such misunderstandings:

1. Any representative who feels that another representative has erred in any way in carrying out this joint cooperative effort or is not adhering to the spirit of the general procedure outlined herein, or is digressing from the assigned responsibility, shall contact such representative for a discussion of the question or questions involved, in an effort to arrive at an amicable understanding.
2. In the event an understanding cannot be reached in accordance with #1 above, the individuals shall submit the matter to their designated supervisors. These two shall confer as early as possible in an effort to reach a decision on the matter and, if one is reached, it shall be transmitted to the parties involved.
3. If they cannot agree, then the matter shall be referred to the State DAS/BAT Coordination Committee.

In the event a representative of either agency receives a complaint from anyone reflecting upon the work of another representative, it shall be the duty of the representative receiving such complaint to tell the one complained of about such complaint, in order that the one involved may have an opportunity to correct or clarify the reason for such complaint. At no time should any

representative promote or encourage criticism of another representative of either agency.

The Bureau of Apprenticeship and Training, subject to its regulations, policies and procedures, has herein agreed to adhere to the policy of the California Apprenticeship Council. The Bureau of Apprenticeship and Training State Director shall be designated as the Bureau's representative to participate and represent the Bureau at all meetings of the California Apprenticeship Council and its standing committee.

TRANSMISSION OF FORMS:

All apprenticeship standards and the Division of Apprenticeship Standards forms dealing with apprenticeship, including Apprenticeship Agreements, will be submitted through the local Division of Apprenticeship Standards office. The Division of Apprenticeship Standards local offices will transmit all apprenticeship material in accordance with established procedures.

CALIFORNIA COUNCIL REPORTS:

The Division of Apprenticeship Standards and the Bureau of Apprenticeship and Training will each compile and forward to the California Apprenticeship Council a quarterly report.

STATISTICAL DATA:

Both agencies will cooperate in the development of statistical data relative to the State and Federal automated information systems.

MODIFICATION:

This agreement may be amended or modified at any time by mutual consent of the Committee. Suggestions for amendments may be made in writing by representatives of either agency through their supervisors to the Committee. When such changes are made and approved by the signatories hereto, or their successors, all representatives shall be notified.

These procedures shall remain in effect until modified or terminated upon request of either party upon sixty (60) days notice. These procedures supersede and replace all other procedures which previously covered the matters herein contained.

APPROVED this 24th day of February, 1986.

/s/ David G. Turner
Regional Director
U.S. Department of
Labor
BUREAU OF
APPRENTICESHIP
AND TRAINING

/s/ Jerry G. Tabaracci
State Director
U.S. Department of
Labor
BUREAU OF
APPRENTICESHIP
AND TRAINING

/s/ Gail W. Jesswein
Chief
State Department of
Industrial Relations
DIVISION OF
APPRENTICESHIP
STANDARDS

/s/ Eugene P. Janvier
Deputy Chief
State Department of
Industrial Relations
DIVISION OF
APPRENTICESHIP
STANDARDS

EXHIBIT G**[SEAL]**

State of California
CALIFORNIA APPRENTICESHIP COUNCIL
Department of Industrial Relations
Division of Apprenticeship Standards
P. O. Box 603
San Francisco, CA 94101
(415) 737-2700

APPELLANT

Northern California and Northern Nevada Sound and Communication Joint Apprenticeship and Training Committee

REAL PARTY IN INTEREST

Electronics and Communications Systems Joint Apprenticeship and Training Committee

RESPONDENT

Chief, Division of Apprenticeship Standards, Decision in The Matter of Electronic and Communication Systems Joint Apprenticeship and Training Committee

NOTICE OF DECISION**CASE NO. 19532**

The California Apprenticeship Council met on October 26, 1990 at Sacramento, California.

During this meeting the Council acted upon the above-referenced matter. Transmitted herewith is the Decision of the California Apprenticeship Council.

/s/ Rita Tsuda
Rita Tsuda, Aide
California Apprenticeship Council

Dated: October 31, 1990

Enc.

cc: Miles Washington, Dep. Att. Gen.
Appren. Board Members

CAC 406 (Rev. 4/90)

NOTICE OF DECISION

CALIFORNIA APPRENTICESHIP COUNCIL
APPEAL BOARD

NORTHERN CALIFORNIA AND	)	No. 19532
NORTHERN NEVADA SOUND)	
AND COMMUNICATION JOINT	)	PROPOSED
APPRENTICESHIP AND	)	DECISION OF
TRAINING COMMITTEE,	)	THE
Appellant,	)	CALIFORNIA
	)	APPRENTICESHIP
v.	)	COUNCIL
	)	APPEAL
DECISION OF THE CHIEF,	)	BOARD
DIVISION OF APPRENTICESHIP)	
STANDARDS, IN THE MATTER)	
OF ELECTRONIC AND)	
COMMUNICATIONS JOINT)	
APPRENTICESHIP AND)	
TRAINING COMMITTEE,)	
Respondent.)	
)	

Northern California and Northern Nevada Sound and Communication Joint Apprenticeship and Training Committee appealed from the decision of the Chief, Division of Apprenticeship Standards dated August 15, 1989.

Pursuant to Title 8, California Code of Regulations section 203(a)(1), the Chairman of the California Apprenticeship Council appointed Albert Diaz, David E. Fox, and Larry J. Uhde to act as an Appeal Board to hear and make a Proposed Decision concerning this appeal. At the hearing of this appeal, which was held on August 28, 1990, in San Francisco, California, the appellant was represented by James W. Evans, Training Director of the

Santa Clara County Electrical Joint Apprenticeship and Training Committee; respondent Gail Jesswein, Chief, Division of Apprenticeship Standards of the Department of Industrial Relations, was represented by Vera Winter Lee, counsel; and appellant was represented by Richard N. Hill and Keith Sherman of Littler, Mendelson, Fastiff & Tichy.

After hearing oral arguments and considering all written documents submitted on behalf of the parties, the Appeal Board recommends that the decision of the Chief of the Division of Apprenticeship Standards, a copy of which is attached hereto as Exhibit A and incorporated herein by reference be sustained and adopted.

DATED: Sept. 19, 1990 /s/ Albert Diaz
ALBERT DIAZ
Chairperson
Appeal Board

DATED: 9-21-90 /s/ David E. Fox
DAVID E. FOX
Member
Appeal Board

DATED: 9-25-90 /s/ Larry J. Uhde
LARRY J. UHDE
Member
Appeal Board

EXHIBIT A

STATE OF CALIFORNIA
 DEPARTMENT OF INDUSTRIAL RELATIONS
 DIVISION OF APPRENTICESHIP STANDARDS
 455 GOLDEN GATE AVENUE
 SAN FRANCISCO 94102

GEORGE DEUKMEJIAN, Governor

(Seal)

ADDRESS REPLY TO:

P.O. BOX 603

SAN FRANCISCO, CA 94101

August 15, 1989

DAS File No. 19532

District No. 06

Phone No. (415) 464-1080

Mr. Dale L. Kirkland, Executive Director
 Electronic and Communications Systems
 Joint Apprenticeship and Training Committee
 171 Mayhew Way, Suite 207
 Pleasant Hill, CA 94523

Dear Mr. Kirkland:

The new Apprenticeship Standards and Addendum Selection Procedures developed by the Electronic and Communication Systems Joint Apprenticeship Committee (JAC) for the occupation of Electronic and Communications Systems Technician, have been approved and are effective August 15, 1989. The Addendum Selection Procedures have been compared with the criteria for approval in the California Plan for Equal Opportunity and are consistent with Selection Method Number Four.

I have officially approved the Apprenticeship Standards and Selection Procedures for the Electronic and Communications Systems Joint Apprenticeship Committee.

However, Cal Code of Regulations Title 8 Section 212.2(b) states " . . . the decision of the Chief DAS regarding approval or disapproval of apprenticeship program standards shall become an Order of the California Apprenticeship Council unless an appeal as provided by subdivision (c) of this section is filed. . . . " Section 212.2(c) states " . . . the sponsor(s) of an existing program(s) may file an appeal of the decision of the Chief DAS with the California Apprenticeship Council. . . . " " . . . The Chief DAS's decision shall be the order of the Council if no appeal is filed within 30 days of the receipt of the decision by the parties. . . . " I would suggest that your JAC limit is apprenticeship activities to preliminary functions only until the approval becomes an Order of the Council.

Thank you and congratulations again.

Very truly yours,

/s/ Gail W. Jesswein
 Gail W. Jesswein, Chief
 Division of Apprenticeship Standards

GWJ:FP:rm

cc: Peter Cunha
 Deputy Chief
 Area Administrator, North
 Richey Gore
 Willie Huff, Consultant
 Program File

RICHARD N. HILL
LITTLER, MENDELSON, FASTIFF & TICHY
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108-2693
Telephone: (415) 433-1940

Attorneys for Plaintiffs
DILLINGHAM CONSTRUCTION N.A., INC. and
MANUEL J. ARCEO dba SOUND SYSTEMS MEDIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DILLINGHAM CONSTRUCTION	) Case No.
N.A., INC., a California corporation,	) C 90 1272 FMS
and MANUEL J. ARCEO dba)
SOUND SYSTEMS MEDIA,	) FIRST
Plaintiffs,	) AMENDED
	) COMPLAINT
v.	) FOR
COUNTY OF SONOMA;	) DECLARATORY
DEPARTMENT OF INDUSTRIAL	) RELIEF; FOR
RELATIONS, DIVISION OF LABOR	) VIOLATION
STANDARDS ENFORCEMENT, an	) OF 42 U.S.C.
administrative agency of the State of	) § 1983; AND
California; THE DEPARTMENT OF	) TO RECOVER
INDUSTRIAL RELATIONS, DIVISION	) MONIES
OF APPRENTICESHIP STANDARDS,	) ERRONEOUSLY
an administrative agency of the State	) WITHHELD
of California; GAIL W. JESSWEIN, in	) PURSUANT
his official capacity as Chief of the	) TO
Division of Apprenticeship Standards;	) CALIFORNIA
and JAMES CURRY, in his official	) LABOR CODE
capacity as Labor Commissioner.	) § 1730
Defendants.)

Plaintiffs Dillingham Construction N.A., Inc. ("Dillingham Construction") and Manuel J. Arceo dba Sound Systems Media ("Sound Systems") complain as follows against all Defendants:

I

JURISDICTION AND VENUE

1. This Court has federal subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 2201 inasmuch as this is an action for declaratory relief involving federal questions. The federal questions involve the preemptive effect of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001, *et seq.*) and the National Labor Relations Act of 1935, as amended (29 U.S.C. § 151, *et seq.*) upon California's prevailing wage and apprenticeship statutes. Plaintiffs also allege a violation of 42 U.S.C. § 1983.

2. Venue is proper in this district pursuant to 29 U.S.C. § 1132(e) and 28 U.S.C. § 1391 in that all Defendants reside or are found within the district and the illegal acts from which Plaintiffs' claims arise were committed and had effect within the district. The Court has jurisdiction over the Fourth Cause of Action under the principles of pendent jurisdiction.

II

PARTIES

3. Plaintiff Dillingham Construction is a corporation duly organized under the laws of the State of Nevada and is authorized to do business in the State of California.

Dillingham is licensed as a contractor under the laws of the State of California. Dillingham Construction is an employer within the meaning of section 2(2) of the National Labor Relations Act (hereinafter the "NLRA") and section 1002(14) of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA").

4. Plaintiff Sound Systems is licensed as a contractor under the laws of the State of California and is engaged in the business of installing low voltage electrical systems. Sound Systems is an employer within the meaning of section 2(2) of the NLRA and section 1002(14) of ERISA.

5. Defendant County of Sonoma is a political subdivision of the State of California.

6. Defendant Department of Industrial Relations, Division of Labor Standards Enforcement is an administrative agency of the State of California and is charged with investigating and enforcing the State laws concerning, among other things, payment of prevailing wages for public works jobs.

7. Defendant James Curry in his official capacity is the acting State Labor Commissioner, who *inter alia*, is the Chief of the Division of Labor Standards Enforcement.

8. Defendant Division of Apprenticeship Standards is an administrative agency of the State of California and is charged with regulating and approving apprenticeship plans according to California law, investigating complaints concerning the operation of apprenticeship plans and enforcing the terms of such plans, including but not limited to apprenticeship standards. Defendant Gail W.

Jesswein in his official capacity, is the acting Chief of the Division of Apprenticeship Standards.

9. Defendant International Brotherhood of Electrical Workers, Local 551 (hereinafter referred to as "IBEW Local 551") is an unincorporated organization which represents and acts for its members in bargaining with employers concerning wages, hours, working conditions and other terms and conditions of employment. IBEW Local 551 is a labor organization within the meaning of section 2(5) of the NLRA and section 1002(4) of ERISA.

III

GENERAL ALLEGATIONS

10. On or about April 15, 1987, Dillingham Construction was awarded a contract by the County of Sonoma for the construction of a new Main Adult Detention Facility in Santa Rosa, California (hereinafter referred to as the "Detention Facility").

11. On or about April 20, 1987, Dillingham subcontracted certain electrical work to Southern Steel Company, Inc., who in turn subcontracted portions of the work to Elenex, Inc.

12. On or about August 15, 1987, Elenex, Inc. subcontracted the electronic installation work at the Detention Facility to Sound Systems.

13. Sound Systems began performing work on the Detention Facility on or about January 1, 1988. Sound Systems is continuing to perform work at the Detention Facility at the request of the County of Sonoma.

14. The Detention Facility project was a public works project within the meaning of section 1720 of the California Labor Code. Accordingly, Sound Systems requested a determination by the County of Sonoma regarding the appropriate prevailing rates applicable to all work performed on the Detention Facility project. On December 14, 1988, the Assistant Sonoma County Administrator determined that Sound Systems should comply with Determination C-422-X-1-88-1B pertaining to the craft of telephone installation worker and related classifications. A copy of the December 14, 1988 letter from the Assistant Sonoma County Administrator and Determination C-422-X-1-88-1B are attached hereto as Exhibit A. For all work performed on the Detention Facility project, Sound Systems paid its employees at or above the prevailing rates set forth in Determination C-422-X-1-88-1B.

15. When Sound Systems began work on the Detention Facility project, it was signatory to a collective bargaining agreement with IBEW Local 202. IBEW Local 202 is a labor organization within the meaning of section 2(5) of the NLRA. The collective bargaining agreement between Sound Systems and IBEW Local 202 included a scale of wages for apprentice electronic technicians and required Sound Systems to make contributions to the Northern California Sound and Communications Joint Apprenticeship Training Committee (hereinafter the "Northern California Sound and Communications J.A.T.C."). The Northern California Sound and Communications J.A.T.C. is an employee welfare benefit plan within the meaning of ERISA section 1002(1). Sound Systems complied with the terms of that collective bargaining agreement at all times prior to May 20, 1988.

16. On or about May 20, 1988, IBEW Local 202 withdrew its representation of the electronic technician employees of Sound Systems.

17. On or about June 1, 1988, Sound Systems entered into a new collective agreement with the National Electronic Systems Technicians Union (hereinafter referred to as "NESTU") covering its electronic technician employees. NESTU is a labor organization within the meaning of section 2(5) of the NLRA. The collective bargaining agreement between Sound Systems and NESTU contains a scale of wages for apprentice electronic technicians and requires Sound Systems to make contributions to the Electronic and Communications Systems Joint Apprenticeship and Training Trust ("Electronic and Communications Systems J.A.T.T."). The Electronic and Communications Systems J.A.T.T. is an employee welfare benefit plan within the meaning of ERISA section 1002(1). At all times subsequent to May 31, 1988, Sound Systems has complied with the terms of the NESTU collective bargaining agreement, including the apprentice wage scale and its obligation to make contributions to the Electronic and Communications Systems J.A.T.T.

18. Pursuant to California Labor Code section 1777.5, the Division of Apprenticeship Standards is authorized to approve apprenticeship training programs for apprentices employed on public works projects. On August 15, 1989, the Division of Apprenticeship Standards approved the Electronic and Communications Systems J.A.T.T. as an apprenticeship training program.

19. California Labor Code section 1777.5 provides in pertinent part as follows:

When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him, in performing any of the work under the contract or subcontract, employees workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of a site for the public work for certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the administrator of apprenticeship.

20. On or about March 14, 1989, Defendant IBEW Local 551 filed a complaint with Division of Apprenticeship Standards against Sound Systems. A true and correct copy of that complaint is attached hereto as Exhibit B. The complaint alleged violations of Labor Code section 1777.5 insofar as it claimed that Sound Systems failed to apply for a certificate to train apprentices and failed to make training fund contributions to the Northern California Sound and Communications J.A.T.C.

21. On or about April 11, 1989, the complaint against Sound Systems was withdrawn on the grounds that the work performed by Sound Systems did not fall under the jurisdiction of the Northern California Sound and Communications J.A.T.C. A true and correct copy of that determination is attached hereto as Exhibit C. Pursuant to this determination, Sound Systems continued to

pay apprenticeship contributions to the Electronic and Communications Systems J.A.T.T.

22. On or about April 28, 1989, despite the withdrawal of the aforementioned complaint, Defendant Division of Apprenticeship Standards issued a notice of noncompliance to Plaintiffs asserting a failure by Sound Systems to request certification to train apprentices and a failure to make training fund contributions pursuant to Labor Code section 1777.5.

23. On or about October 20, 1989, Defendant Division of Labor Standards Enforcement issued a Notice To Withhold directing the County of Sonoma to withhold from Dillingham Construction the amount of \$45,103.37 based on the work performed by Sound Systems. This amount consisted of \$30,553.37 in wages allegedly owed and \$14,550.00 in penalties. Plaintiffs are informed and believe that the Notice To Withhold is based on Sound Systems' failure to make contributions to the Northern California Sound and Communications J.A.T.C. and its failure to pay journeyman wages to its apprentice electronic technicians.

FIRST CAUSE OF ACTION ERISA PREEMPTION

24. Plaintiffs repeat and reallege paragraphs 3 through 22 above and incorporate by reference said paragraphs. This cause of action is for a declaration of Plaintiffs' rights under federal law pursuant to ERISA.

25. There is an actual controversy between Plaintiffs and Defendants concerning the authority of the Division of Apprenticeship Standards and the Division of Labor

Standards Enforcement to require Sound Systems to participate in and comply with the terms of the Northern California Sound and Communications J.A.T.C. and to require Sound Systems to make fringe benefit contributions to the Northern California Sound and Communications J.A.T.C. Specifically, there is an actual controversy between Plaintiffs and Defendants concerning whether application of section 1777.5 of the California Labor Code to Sound Systems is preempted by ERISA.

26. There is an actual controversy between Plaintiffs and Defendant County of Sonoma concerning the County's participation in enforcing California Labor Code section 1777.5 penalties against Plaintiff Sound Systems Media for its failure to pay journeyman wage rates to its apprentices. Specifically, there is an actual controversy as to whether enforcement by the County of Sonoma of section 1777.5 of the California Labor Code to Sound Systems is preempted by ERISA.

27. Section 514(a) of ERISA provides in pertinent part as follows:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

28. The Northern California Sound and Communication J.A.T.C. is an employee benefit plan within the meaning of 29 U.S.C. § 1002(1).

29. Application of California Labor Code section 1777.5 to Sound Systems is preempted by ERISA because it relates to an employee benefit plan within the meaning of ERISA. Specifically, any attempt by the Division of Apprenticeship Standards, the Department of Labor Standards Enforcement, or the County of Sonoma to either force Sound Systems to participate in or make contributions to the Northern California Sound and Communications J.A.T.C. or to pay journeyman wages to its apprentices if and until the state chooses to approve Sound Systems' apprenticeship program is preempted by ERISA section 514(a).

30. Accordingly, Plaintiffs request a declaration from the Court that Defendants may not attempt to enforce California Labor Code section 1777.5 against Plaintiffs so as to require Sound Systems to participate in or make contributions to the Northern California Sound and Communications J.A.T.C.

SECOND CAUSE OF ACTION NLRA PREEMPTION

31. Plaintiffs repeat and reallege paragraphs 3 through 28 above and incorporate by reference said paragraphs. This cause of action is for a declaration of Plaintiffs' rights under federal law pursuant to the NLRA.

32. There is an actual controversy between Plaintiffs and Defendants concerning the authority of the Division of Apprenticeship Standards, the Division of Labor Standards Enforcement, and the County of Sonoma to require

Sound Systems to pay wages and fringe benefit contributions different than those set forth in its collective bargaining agreement with NESTU. Specifically there is an actual controversy between Plaintiffs and Defendants concerning whether the application of California's prevailing wage statutes against Sound Systems is preempted by the NLRA.

33. The NLRA and principles of federal supremacy preempt the authority of the Division of Apprenticeship Standards, the Division of Labor Standards Enforcement, and the County of Sonoma to enforce California's prevailing wage statutes against Sound Systems so as to require Sound Systems to pay wages and benefits to its apprentice electronic technicians in excess of those set forth in its collective bargaining agreement with NESTU.

34. The NLRA and principles of federal supremacy preempt the authority of the Division of Apprenticeship Standards, the Division of Labor Standards Enforcement, and the County of Sonoma to enforce California Labor Code section 1777.5 against Sound Systems so as to require Sound Systems to pay training/apprenticeship contributions other than those set forth in its collective bargaining agreement with NESTU.

35. Accordingly, Plaintiffs request a declaration from the Court that Defendants may not attempt to enforce California's prevailing wage statutes, including Labor Code section 1777.5, against Sound Systems so as to require Sound Systems to pay wages and benefits, including training/apprenticeship contributions, other than those contained in its collective bargaining agreement with NESTU.

THIRD CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1983

36. Plaintiffs repeat and reallege paragraphs 3 through 33 above and incorporate by reference said paragraphs. This cause of action is for violation of 42 U.S.C. § 1983.

37. Section 1983 provides in pertinent part that:

Every person who, under color of any statute, ordinance, regulation, customs, or usage of any state . . . subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivations of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . .

38. One of the rights secured by section 1983 is the right of employers and labor organizations to be free of governmental interference in the collective bargaining process. This right is granted by the NLRA and enforceable under section 1983.

39. Defendants Gail Jesswein in his official capacity as Chief of the Division of Apprentice Standards and James Curry in his official capacity as Labor Commissioner and head of the Division of Labor Standards Enforcement have violated the right of Plaintiff Sound Systems to be free of governmental interference in the collective bargaining process by, under the color of state law, attempting to force Sound Systems to participate in and contribute to the Northern California Sound and Communications J.A.T.C. and by attempting to force Sound Systems to pay wages and fringe benefits in excess

of those set forth in its collective bargaining agreement with NESTU.

40. Plaintiffs are entitled to recover compensatory damages, including attorney's fees, from Defendants in their official capacity in an amount according to proof.

FOURTH CAUSE OF ACTION RECOVERY OF MONIES ERRONEOUSLY WITHHELD

41. Plaintiffs repeat and reallege paragraphs 3 through 38 above and incorporate by reference said paragraphs. This cause of action is to recover monies erroneously withheld pursuant to Labor Code section 1730, *et seq.*

42. Under California Labor Code section 1730 *et seq.*, when James Curry in his official capacity and the Division of Labor Standards Enforcement order an awarding body to withhold money from a contractor or subcontractor based on an alleged failure to pay the required prevailing rate, the contractor or subcontractor must bring suit against the awarding body within 90 days after completion of the contract and formal acceptance of the job.

43. This complaint is timely because the County of Sonoma has claimed that the Detention Facility project has not yet been completed and thus there has been no formal acceptance of the job.

44. For the reasons set forth above in the first three causes of action, the Notice To Withhold issued by James Curry in his official capacity and the Division of Labor Standards Enforcement to the County of Sonoma is

invalid on the grounds that it is preempted by ERISA, preempted by the NLRA and is a violation of 42 U.S.C. § 1983.

45. In addition, Sound Systems was entitled to rely and did rely on the determination by the Assistant Sonoma County Administrator that Determination C-422-X-1-88-1B applied to all work performed by Sound Systems on the Detention Facility project. In the absence of clear error, bad faith or fraud, none of which are present in this case, James Curry in his official capacity and the Division of Labor Standards Enforcement were required to accept the classification chosen by the County of Sonoma. This policy was announced by the State Labor Commissioner in Interpretive Bulletin 87-2, a copy of which is attached as Exhibit D.

46. Accordingly, Plaintiffs request that the Court order James Curry in his official capacity and the Division of Labor Standards Enforcement to rescind the Notice To Withhold issued in Case No. 31-01303 and order the County of Sonoma to release to Dillingham the sum of \$45,103.37 withheld pursuant to that Notice To Withhold.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. That the Court enter a declaratory judgment that Defendants may not enforce California Labor Code section 1777.5 so as to require Sound Systems to participate

in or make contributions to the Northern California Sound and Communications J.A.T.C.;

2. That the Court enter a declaratory judgment that Defendants may not enforce California's prevailing wage statutes, including Labor Code section 1777.5, so as to require Sound Systems to pay wages and fringe benefits, including training/apprenticeship contributions, different than those set forth in the collective bargaining agreement between Sound Systems and NESTU;

3. That Plaintiffs be awarded compensatory damages according to proof;

4. That the County of Sonoma be ordered to release to Dillingham Construction the sum of \$45,103.37 withheld pursuant to the Notice To Withhold in Case No. 31-01303;

5. That Plaintiffs be awarded their attorney's fees and costs of suit incurred in prosecuting this action; and

6. That Plaintiffs be awarded such other and further relief as the Court deems just and proper.

DATED: November 30, 1990

Respectfully submitted,

LITTLER, MENDELSON, FASTIFF & TICHY
A Professional Corporation
RICHARD N. HILL

By: /s/ Keith M. Sherman
KEITH M. SHERMAN

Attorneys for Plaintiffs
DILLINGHAM CONSTRUCTION N.A., INC.
and MANUEL J. ARCEO dba
SOUND SYSTEMS MEDIA

John M. Rea, Chief Counsel
Department of Industrial Relations
400 Oyster Point Blvd., Wing C, Ste. 504
So. San Francisco, CA 94080
Telephone: (415) 737-2900
Attorney for Defendant
Department of Industrial Relations,
Division of Apprenticeship Standards

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DILLINGHAM CONSTRUCTION
N.A., INC., a California
corporation, and MANUEL J.
ARCEO dba SOUND SYSTEMS
MEDIA,

Plaintiffs,

vs.

COUNTY OF SONOMA;
DEPARTMENT OF INDUSTRIAL
RELATIONS, DIVISION OF
LABOR STANDARDS
ENFORCEMENT, an administrative
agency of the State of California;
THE DEPARTMENT OF
INDUSTRIAL RELATIONS,
DIVISION OF APPRENTICESHIP
STANDARDS, an administrative
agency of the State of California;
and INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 551,
Defendants.

CASE NO. C 90
1272 FMS

ANSWER TO THE
FIRST AMENDED
COMPLAINT FOR
DECLARATORY
RELIEF

(Filed
Dec. 21, 1990)

COMES NOW, defendant DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF APPRENTICESHIP STANDARDS, and on behalf of itself alone, answers the complaint as follows:

1. Defendant denies, generally and specifically, each and every allegation contained with Paragraph 1 of the complaint.

2. Answering Paragraphs 2, 3, and 4, defendant has insufficient information or belief with which to answer the allegations contained within these Paragraphs of the complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

3. Answering Paragraphs 5, 6, and 9, defendant admits the allegations.

4. Defendant admits the allegation contained within Paragraph 7 of the complaint.

5. Answering Paragraph 8, defendant denies that it enforces the terms of apprenticeship plans, contends that it acts under state and federal law to approve program sponsors who train apprentices under standards, when such program sponsors voluntarily seek such approval. Except for such denial, defendant admits the remaining allegations of Paragraph 8.

6. Defendant admits the allegation contained within Paragraph 9 of the complaint.

GENERAL ALLEGATIONS

7. Answering Paragraphs 10, 11, 12, and 13, defendant has insufficient information or belief with which to

answer the allegations contained within such Paragraphs of the complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

8. Defendant denies each and every allegation contained within Paragraph 14 of the complaint; except admits that the Detention Facility project was a public works project within the meaning of section 1720 of the California Labor Code. Defendant admits that a copy of the letter of December 14, 1988 is attached as Exhibit A to the complaint.

9. Answering Paragraphs, 15, 16, and 17, defendant has insufficient information or belief with which to answer the allegations contained within such Paragraphs of the complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

10. In response to Paragraph 18, admits only that the California Apprenticeship Council, as a "state approved council" within the meaning of 29 C.F.R. § 29, and the National Apprenticeship Act, 20 U.S.C. § 50, approves program for federal and state purposes, and that the Chief of the Division of Apprenticeship exercises this authority under Chapter 4 of Division 3 of the California Labor Code. Pursuant to 8 California Code of Regulations section 212.2, such an approval by the Chief becomes an order of the California Apprenticeship Council unless appealed. An approval letter was issued August 15, 1989, but did not become a final order of the Council because a timely appeal was filed, which is still

pending. Except as set forth above, defendant denies the allegations of Paragraph 18.

11. Defendant denies the legal relevance of pertinence of a partial quotation contained within Paragraph 19 of the complaint but admits that California Labor Code section 1777.5 reads in part as quoted.

12. In response to Paragraph 20, admit.

13. In response to Paragraph 21, deny that the letter attached as Exhibit C is a "determination" rather than a letter notifying a party of withdrawal of a complaint, admit that the letter is true and authentic, and speaks for itself. Otherwise, defendant has insufficient information or belief with which to answer the allegations contained within such Paragraphs of the complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

14. In response to Paragraph 22, admit that a Form N-614 Notice of Non-Compliance was issued, that it was based on the April 3, 1989 complaint, and further that it was based on the determination of the Bureau of Field Enforcement of the Division of Labor Standards Enforcement's classification of work, and the representation of Mr. Arceo in an April 20, 1990 meeting that the work was sound communication work. No action is or has been taken on the complaint pending resolution of the classification issue. Otherwise, deny.

15. Defendant denies each and every allegation contained within Paragraph 23 of the complaint; excepts admits that on or about October 20, 1989, co-defendant DLSE filed a Notice to Withhold with the County of

Sonoma in the sum of \$45,103.37 which represents the sum of \$30,553.37 in unpaid wages plus \$14,500.00 in penalties, and affirmatively alleges that on or about October 25, 1989, co-defendant DLSE filed another Notice to Withhold with the County of Sonoma in the sum of \$4,082.25, which represents \$2,082.25 in unpaid wages plus \$2,000.00 in penalties.

FIRST CAUSE OF ACTION

16. In response of Paragraph 24, defendant incorporates hereto Paragraphs 1 through 15, inclusive, of its answers as if fully set forth herein.

17. Responding to Paragraph 25, defendant denies each and every allegation contained within Paragraph 25 of the complaint.

18. Responding to Paragraph 26, deny.

19. Responding to Paragraph 27, admits that the partial quotation for section 514(a) of ERISA is accurate.

20. Defendant has insufficient information or belief as to the status of the JATC, and on that ground denies each and every allegation contained within Paragraph 28 of the complaint.

21. Responding to Paragraphs 29 and 30, defendant denies each and every allegation contained with Paragraphs 29 and 30 of the complaint.

SECOND CAUSE OF ACTION

22. Responding to Paragraph 31, defendant incorporates hereto Paragraphs 1 through 21, inclusive, of its answers as if fully set forth above.

23. Responding to Paragraphs 32, 33, 34, and 35, defendant denies each and every allegation contained within those Paragraphs of the complaint.

THIRD CAUSE OF ACTION

24. Responding to Paragraph 36, defendant incorporates hereto Paragraphs 1 through 23, inclusive, of its answer as if fully set forth herein.

25. Responding to Paragraph 37, admits that 42 U.S.C. § 1983 reads as quoted.

26. Responding to Paragraphs 38, 39, and 40, defendant denies each and every allegation contained within those Paragraphs of the complaint.

FOURTH CAUSE OF ACTION

27. Responding to Paragraph 41, defendant incorporates hereto Paragraphs 1 through 26, inclusive, of its answer as if fully set forth herein.

28. Responding to Paragraph 42, admit that Labor Code section 1730 speaks for itself, otherwise denies.

29. Responding to Paragraph 43, defendant has insufficient information or belief with which to answer

the allegations contained within Paragraph 43 of the complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

30. Defendant denies each and every allegation contained within Paragraph 44 of the complaint.

31. Responding to Paragraph 45, admits that a true copy of Interpretive Bulletin 87-2 is Exhibit D, but otherwise is without information or belief with which to answer the allegations contained within such Paragraphs of the complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

32. Responding to Paragraph 46, defendant denies each and every allegation contained within Paragraph 46 of the complaint.

FIRST AFFIRMATIVE DEFENSE

Fails to state a claim upon which relief can be granted as to the Division of Apprenticeship Standards.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to join a necessary party, the Joint Apprenticeship Training Committee, as to which it seeks a declaration that the JATC's right to contributions, and training for the JATC's apprentices, are preempted based on the JATC's alleged status as a "plan" under ERISA.

THIRD AFFIRMATIVE DEFENSE

Commencement of state enforcement proceedings before the filing of this action makes *Younger* abstention mandatory.

FOURTH AFFIRMATIVE DEFENSE

Because the Division of Apprenticeship Standards has suspended proceedings on its Notice of Non-Compliance pending resolution of any classification issue, there is no present case or controversy, and plaintiff lacks standing to pursue declaratory or other relief.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has (Paragraph 45; Exhibit D to complaint) put in issue under state law the propriety of state defendants' enforcement of classifications other than chosen by Sonoma, making *Pullman* abstention appropriate.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust administrative remedies in two ways. First, it has failed to take any steps to exhaust its right to California Apprenticeship Council resolution of the appeal of its apprenticeship program as an approved program. Second, in the alternative, if there is a live controversy over the Notice of Non-Compliance it has failed to exhaust the administrative appeal of the Notice of Non-Compliance, which it could have secured by requesting that the now dormant complaint be brought before the CAC.

SEVENTH AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the Claims for Relief.

EIGHTH AFFIRMATIVE DEFENSE

As to the Third Cause of Action for interference with plaintiff's collective bargaining relationship with NESTU, the complaint fails to either join NESTU as a party necessary for relief or explain why joinder is not necessary.

NINTH AFFIRMATIVE DEFENSE

As to the Fourth Claim for Relief, plaintiff has misjoined other claims for relief with state causes of action for recoveries of monies, whose right to recovery is specifically conditioned on the general contractor's action being maintained solely on those grounds.

TENTH AFFIRMATIVE DEFENSE

Fails to join necessary and indispensable party, the employers' JATC apprentices and the employer association which makes up half of the JATC, who have interests in state recognition on state public works, and in paying apprentices below the prevailing rate on state public works, both of which would fall to ERISA preemption if plaintiff succeeds.

ELEVENTH AFFIRMATIVE DEFENSE

Fails to join the Secretary of Labor as a necessary and indispensable party in a suit under ERISA, to declare

invalid and enjoin the state enforcement of state laws given regulatory and contractual approval by the Secretary for apprenticeship programs in California.

TWELFTH AFFIRMATIVE DEFENSE

Fails to state a claim because both NLRA and ERISA preemption, as to which declaratory relief is sought, are anticipatory defenses to a state civil proceeding commenced by the Notice to Withhold.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to raise defenses as to apprenticeship because they cannot show that any person employed at the time was an apprentice meeting any definition under any federal or state labor law standards.

FOURTEENTH AFFIRMATIVE DEFENSE

Claims for compensatory damages, except attorneys fees are barred by the Eleventh Amendment.

The complaint should be dismissed pursuant to *Younger* abstention because it was filed after the commencement of state proceedings by the Notice to Withhold.

WHEREFORE, defendant prays for judgment against plaintiffs as follows:

1. For dismissal of all Claims for Relief;
2. For costs of suit and attorneys fees herein; and

3. For such other and further relief as the Court may deem just and proper.

DATED: December 21, 1990

/s/ Raoul M. Thorbourne
JOHN M. REA, Chief Counsel
RAOUL M. THORBOURNE,
Counsel
 Attorneys for Defendant
 Division of Apprenticeship
 Standards

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

BY: RAMON YUEN-GARCIA, Attorney
30 Van Ness Avenue, Suite 4400
San Francisco, California 94102
Telephone: (415) 557-2516

Attorney for Defendant
COUNTY OF SONOMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DILLINGHAM CONSTRUCTION)	
N.A., INC., a California corporation,)	
and MANUEL J. ARCEO dba	)	NO. C 90 1272 FMS
SOUND SYSTEMS MEDIA,)	
)	
Plaintiffs,	)	ANSWER OF
	)	COUNTY OF
vs.	)	SONOMA TO
COUNTY OF SONOMA;	)	FIRST AMENDED
DEPARTMENT OF INDUSTRIAL	)	COMPLAINT
RELATIONS, DIVISION OF)	
LABOR STANDARDS)	
ENFORCEMENT, an administrative)	
agency of the State of California;)	
THE DEPARTMENT OF)	
INDUSTRIAL RELATIONS,)	
DIVISION OF APPRENTICESHIP)	
STANDARDS, an administrative)	
agency of the State of California;)	
GAIL W. JESSWEIN, in his official)	
capacity as Chief of the Division)	
of Apprenticeship Standards; and)	
JAMES CURRY, in his official)	
capacity as Labor Commissioner.)	
)	
Defendants.)	

COMES NOW, defendant COUNTY OF SONOMA, and severing itself from the other named defendants and on behalf of itself alone, answers the first amended complaint as follows:

1. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 1 of the first amended complaint.

2. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 2 of the first amended complaint.

3. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 3 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein; except admits that defendant DILLINGHAM CONSTRUCTION N.A., INC. is a corporation and licensed contractor under the laws of the State of California.

4. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 4 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

5. Defendant admits the allegation contained within Paragraph 5 of the first amended complaint.

6. Defendant admits the allegation contained within Paragraph 6 of the first amended complaint.

7. Defendant admits the allegation contained within Paragraph 7 of the first amended complaint.

8. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 8 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

9. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 9 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

GENERAL ALLEGATIONS

10. Defendant admits the allegations contained within Paragraph 10 of the first amended complaint.

11. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 11 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

12. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 12 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

13. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 13 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein; and further denies that

SOUND SYSTEMS is continuing to perform work at the Detention Facility at the request of defendant.

14. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 14 of the first amended complaint; except admits that the Detention Facility Project was a public works project within the meaning of section 1720 of the California Labor Code. Defendant further denies that a copy of the letter of December 14, 1988 is, attached as Exhibit A to the first amended complaint, and served on defendant.

15. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 15 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

16. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 16 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

17. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 17 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

18. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 18 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

19. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 19 of the first amended complaint; except admits that California Labor Code, Section 1777.5 reads what it reads.

20. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 20 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein; and further denies that a copy of the first amended complaint filed by IBEW Local 551 with the Division of Apprenticeship Standards is attached as Exhibit B to the first amended complaint, and served on defendant.

21. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 21 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein; and further denies that a copy of the determination is attached as Exhibit C to the first amended complaint, and served on defendant.

22. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 22 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

23. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 23 of the first amended complaint; excepts admits that on or about October 20, 1989, the Division of Labor Standards Enforcement filed a Notice to Withhold with defendant

County of Sonoma in the sum of \$45,103.37 which represents the sum of \$30,553.37 in unpaid wages plus \$14,550.00 in penalties, and affirmatively alleges that on or about October 25, 1989, the Division of Labor Standards Enforcement filed another Notice to Withhold with defendant County of Sonoma in the sum of \$4,082.25 which represents \$2,082.25 in unpaid wages plus \$2,000.00 in penalties.

FIRST CAUSE OF ACTION

24. Defendant incorporates hereto Paragraphs 3 through 22, inclusive, of its answers as if fully set forth herein, and further denies, generally and specifically, each and every allegation contained therein.

25. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 25 of the first amended complaint.

26. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 26 of the first amended complaint.

27. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 27 of the first amended complaint; except admits that Section 514(a) of ERISA reads what it reads.

28. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 28 of the first amended complaint.

29. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 29 of the first amended complaint.

30. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 30 of the first amended complaint.

SECOND CAUSE OF ACTION

31. Defendant incorporates hereto Paragraphs 3 through 28, inclusive, of its answers as if fully set forth herein, and further denies, generally and specifically, each and every allegation contained therein.

32. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 32 of the first amended complaint.

33. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 33 of the first amended complaint.

34. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 34 of the first amended complaint.

35. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 35 of the first amended complaint.

THIRD CAUSE OF ACTION

36. Defendant incorporates hereto Paragraphs 3 through 33, inclusive, of its answers as if fully set forth herein, and further denies, generally and specifically, each and every allegation contained therein.

37. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 37

of the first amended complaint; except admits that 42 U.S.C. §1983 reads what it reads.

38. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 38 of the first amended complaint.

39. Defendant has insufficient information or belief with which to answer the allegations contained within Paragraph 39 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein.

40. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 40 of the first amended complaint.

FOURTH CAUSE OF ACTION

41. Defendant incorporates hereto Paragraphs 3 through 38, inclusive, of its answers as if fully set forth herein, and further denies, generally and specifically, each and every other allegation contained therein.

42. Defendant denies, generally and specifically, each and every allegation contained in Paragraph 42 of the first amended first amended complaint; except admit that California Labor Code, Sections 1730 et seq., read what they read.

43. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 43 of the first amended complaint.

44. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 44 of the first amended complaint.

45. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 45 of the first amended complaint or that a copy of Interpretive Bulletin 87-2 is attached to the first amended complaint as Exhibit D and served on defendant.

46. Defendant denies, generally and specifically, each and every allegation contained within Paragraph 46 of the first amended complaint.

AFFIRMATIVE DEFENSES

1. The first amended complaint fails to state a claim against defendant upon which relief can be granted.

2. Plaintiffs may not base their claim for relief on the provisions of the California Labor Code and at the same time challenge the same statutory provisions.

3. Plaintiff, MANUEL J. ARCEO dba SOUND SYSTEMS MEDIA, has no standing in his claim for relief to recover the funds withheld pursuant to the Notices to Withhold under the provisions of the California Labor Code.

4. Plaintiff, MANUEL J. ARCEO dba SOUND SYSTEMS MEDIA, is not in privity of contract with defendant.

5. Under the provisions of California Labor Code, Section 1733, the action to recover the funds withheld by the County of Sonoma on the public works project known

as the Main Adult Detention Facility, under the Notices to Withhold filed by the DIVISION OF LABOR STANDARDS ENFORCEMENT, is the exclusive remedy of plaintiff, DILLINGHAM CONSTRUCTION N.A., INC. or its assignee.

6. The provisions of both California Labor Code, Sections 1733 and 1775, provide that the burden of proof is upon the plaintiff, DILLINGHAM CONSTRUCTION N.A., INC. to show that the money withheld by the defendant or which the DIVISION OF LABOR STANDARDS ENFORCEMENT contends is due is not owed.

7. No other issues may be included in the action to recover the funds withheld pursuant to the Notices to Withhold filed by the DIVISION OF LABOR STANDARDS ENFORCEMENT under the provisions of California Labor Code, Section 1733.

8. Claims for relief relating to Declaratory Relief, ERISA and NLRA PREEMPTIONS, and Violation of 42 U.S.C. §1983, may not be included in the claim for relief for the Recovery of Penalties and Forfeitures under the provisions of California Labor Code, Section 1733.

9. The court has no authority to review the proprietary functions of the State.

10. The letting of public contracts is the exercise of the State reserved powers and are protected under the Tenth Amendment of the United States Constitution.

11. The enactment of the State prevailing wage law is not an exercise of the State's general regulatory powers.

12. The prevailing wage law is a minimum standard, and the interpretation of the statute by the State's highest court is conclusive upon the federal courts.

13. Plaintiffs' right are not impinged upon under 42 U.S.C. §1983.

14. Defendant has faithfully discharged all its obligations under the contract and the statutory provisions as required by law.

15. Defendant has not waived any of its statutory rights nor the rights under the contract with DILLINGHAM CONSTRUCTION N.A., INC.

16. Plaintiff, DILLINGHAM CONSTRUCTION N.A., INC. has failed to discharge all its obligations under the contract or complied with all statutory provisions.

17. Plaintiffs have violated and failed to comply with the procedural requirements of the statutory provisions relating to the California prevailing wage laws.

18. Plaintiffs are not entitled to any of the funds withheld by defendant.

19. All disputes relating to the public works contract and the bonds issued by The American Insurance Company and Fireman's Fund Insurance Company are subject to arbitration.

20. Defendant is required by law to withhold the funds upon the filing of the Notice to Withhold by the DIVISION OF LABOR STANDARDS ENFORCEMENT.

21. Defendant has not misled, misrepresented, or made any representations or statements with respect to

any statutory or contractual rights or obligations upon which plaintiffs or either plaintiff relied to their, its or his detriment.

WHEREFORE, defendant prays that plaintiffs take nothing for their first amended complaint, and that defendant be awarded attorney's fees and costs of suit herein, and for such other and further relief as the Court may deem just and proper.

DATED: January 23, 1991

/s/ Ramon Yuen-Garcia
RAMON YUEN-GARCIA
 Attorney for Defendant
 COUNTY OF SONOMA

DIVISION OF LABOR STANDARDS ENFORCEMENT
 Department of Industrial Relations
 State of California
 BY: RAMON YUEN-GARCIA, Attorney
 30 Van Ness Avenue, Suite 4400
 San Francisco, California 94102
 Telephone: (415) 557-2516

Attorney for Defendants DIVISION
 OF LABOR STANDARDS ENFORCEMENT
 and JAMES CURRY, Labor Commissioner

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

DILLINGHAM CONSTRUCTION N.A.,)
 INC., a California corporation, and)
 MANUEL J. ARCEO dba SOUND)
 SYSTEMS MEDIA,)
 Plaintiffs,)

vs.)

COUNTY OF SONOMA; DEPARTMENT)
 OF INDUSTRIAL RELATIONS,)
 DIVISION OF LABOR STANDARDS)
 ENFORCEMENT, an administrative)
 agency of the State of California; THE)
 DEPARTMENT OF INDUSTRIAL)
 RELATIONS, DIVISION OF)
 APPRENTICESHIP STANDARDS, an)
 administrative agency of the State of)
 California; GAIL W. JESSWEIN, in his)
 official capacity as Chief of the)
 Division of Apprenticeship Standards;)
 and JAMES CURRY, in his official)
 capacity as Labor Commissioner.)

Defendants.)

NO. C 90
 1272 FMS

ANSWER TO
 FIRST
 AMENDED
 COMPLAINT

COMES NOW, defendants DIVISION OF LABOR STANDARDS ENFORCEMENT and JAMES CURRY, Labor Commissioner, and severing itself from the other named defendants and on behalf of themselves, answers the first amended complaint as follows:

1. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 1 of the first amended complaint.

2. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 2 of the first amended complaint.

3. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 3 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

4. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 4 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

5. Defendants admit to the allegations contained within Paragraph 5 of the first amended complaint.

6. Defendants admit to the allegations contained within Paragraph 6 of the first amended complaint.

7. Defendants admit to the allegations contained within Paragraph 7 of the first amended complaint.

8. Defendants admit to the allegations contained within Paragraph 8 of the first amended complaint.

9. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 9 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

GENERAL ALLEGATIONS

10. Defendants admit to the allegations contained within Paragraph 10 of the first amended complaint.

11. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 11 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

12. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 12 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

13. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 13 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

14. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 14 of the first amended complaint; except admit that the Detention Facility Project was a public works project within the meaning of section 1720 of the California Labor Code. Defendants further deny that a copy of the

letter of December 14, 1988 is attached as Exhibit A to the complaint and served on defendants.

15. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 15 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

16. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 16 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

17. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 17 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

18. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 18 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein; except admit that the Division of Apprenticeship Standards is authorized to approve apprenticeship training programs.

19. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 19 of the first amended complaint; except admit that California Labor Code, Section 1777.5 reads what it reads.

20. Defendants have insufficient information or belief with which to answer the allegations contained

within Paragraph 20 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein; and further deny that a copy of the complaint filed by IBEW Local 551 with the Division of Apprenticeship Standards is attached as Exhibit B to the first amended complaint, and served on defendants.

21. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 21 of the first amended complaint, and on that ground denies, generally and specifically, each and every allegation contained therein; and further denies that a copy of the determination is attached as Exhibit C to the first amended complaint, and served on defendants.

22. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 22 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

23. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 23 of the first amended complaint; excepts [sic] admit that on or about October 20, 1989, defendants filed a Notice to Withhold with the County of Sonoma in the sum of \$45,103.37 which represents the sum of \$30,553.37 in unpaid wages plus \$14,550.00 in penalties, and affirmatively allege that on or about October 25, 1989, defendants filed another Notice to Withhold with the County of Sonoma in the sum of \$4,082.25 which represents \$2,082.25 in unpaid wages plus \$2,000.00 in penalties.

FIRST CAUSE OF ACTION

24. Defendants incorporate hereto Paragraphs 1 through 24, inclusive, of their foregoing answers as if fully set forth herein.

25. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 25 of the first amended complaint.

26. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 26 of the first amended complaint.

27. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 27 of the first amended complaint; except admits that Section 514(a) of ERISA reads what it reads.

28. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 28 of the first amended complaint.

29. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 29 of the first amended complaint.

30. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 30 of the first amended complaint.

SECOND CAUSE OF ACTION

31. Defendants incorporate hereto Paragraphs 3 through 28, inclusive, of their foregoing answers as if fully set forth herein.

32. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 32 of the first amended complaint.

33. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 33 of the first amended complaint.

34. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 34 of the first amended complaint.

35. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 35 of the first amended complaint.

THIRD CAUSE OF ACTION

36. Defendants incorporate hereto Paragraphs 3 through 33, inclusive, of their foregoing answers as if fully set forth herein; and further deny each and every allegation contained therein.

37. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 37 of the first amended complaint; except admit that 42 U.S.C. §1983 reads what it reads.

38. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 38 of the first amended complaint.

39. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 39 of the first amended complaint.

40. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 40 of the first amended complaint.

41. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 41 of the first amended complaint.

FOURTH CAUSE OF ACTION

42. Defendants incorporate hereto Paragraphs 3 through 38, inclusive, of their foregoing answers as if fully set forth herein.

43. Defendants deny, generally and specifically, each and every allegation contained in Paragraph 43 of the first amended complaint; except admit that California Labor Code, Sections 1730 et seq., read what they read.

44. Defendants have insufficient information or belief with which to answer the allegations contained within Paragraph 44 of the first amended complaint, and on that ground deny, generally and specifically, each and every allegation contained therein.

45. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 45 of the first amended complaint.

46. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 46 of the first amended complaint or that a copy of Interpretive Bulletin 87-2 is attached to the first amended complaint as Exhibit D and served on defendants.

47. Defendants deny, generally and specifically, each and every allegation contained within Paragraph 47 of the first amended complaint.

WHEREFORE, defendants pray that plaintiffs take nothing for their first amended complaint, and that defendants be awarded attorney's fees and costs of suit herein, and for such other and further relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

1. The first amended complaint fails to state a claim against defendants upon which relief can be granted.

2. Plaintiffs may not base their claims for relief on the provisions of the California Labor Code and at the same time challenge the same statutory provisions.

3. Plaintiff, MANUEL J. ARCEO dba SOUND SYSTEMS MEDIA, has no standing in his claim for relief to recover the funds withheld pursuant to the Notices to Withhold under the provisions of the California Labor Code.

4. Plaintiff, MANUEL J. ARCEO dba SOUND SYSTEMS MEDIA, is not in privity of contract with the County of Sonoma.

5. Under the provisions of California Labor Code, Section 1733, the action to recover the funds withheld by the County of Sonoma on the public works project known as the Main Adult Detention Facility, under the Notices to Withhold filed by the DIVISION OF LABOR STANDARDS ENFORCEMENT, is the exclusive remedy of

plaintiff, DILLINGHAM CONSTRUCTION N.A., INC. or its assignee.

6. The provisions of both California Labor Code, Sections 1733 and 1775, provide that the burden of proof is upon plaintiff, DILLINGHAM CONSTRUCTION N.A., INC., to show that the money withheld by the County of Sonoma or which defendants contends is due, is not owed.

7. No other issues may be included in the action to recover the funds withheld pursuant to the Notices to Withhold filed by the DIVISION OF LABOR STANDARDS ENFORCEMENT, under the provisions of California Labor Code, Section 1733.

8. Claims for relief relating to Declaratory Relief, ERISA and NLRA PREEMPTIONS, and Violation of 42 U.S.C. §1983, may not be included in the claim for relief for the Recovery of Penalties and Forfeitures under the provisions of California Labor Code, Section 1733, and the court is without jurisdiction to hear the Fourth Claim for Relief.

9. The court has no authority to review the proprietary functions of the State.

10. The letting of public contracts is the exercise of the State reserved powers and are protected under the Tenth Amendment of the United States Constitution.

11. The enactment of the State prevailing wage law is not an exercise of the State's general regulatory powers.

12. The prevailing wage law is a minimum standard, and the interpretation of the statute by the State's highest court is conclusive upon the federal courts.

13. Plaintiffs' right are not impinged upon under 42 U.S.C. §1983.

14. Defendants have complied with all statutory provisions as required by law.

15. Defendants have not waived any of its statutory rights.

16. Plaintiff, DILLINGHAM CONSTRUCTION N.A., INC. has failed to discharge all its obligations under the contract with the County of Sonoma.

17. Plaintiffs have violated and failed to comply with the procedural requirements of the statutory provisions relating to the California prevailing wage laws.

18. Plaintiffs are not entitled to any of the funds withheld by the County of Sonoma.

19. Defendants have not misled, misrepresented, or made any representations or statements with respect to any statutory or contractual rights or obligations upon which plaintiffs or either plaintiff relied to their, its or his detriment.

20. Defendants are entitled to judgment to the counterclaims of the Division of Labor Standards Enforcement as set forth in the Division's initial answer to the complaint.

WHEREFORE, defendants further pray for judgment against plaintiffs on the Division of Labor Standards

Enforcement's counterclaim for relief pleaded in its initial answer as follows:

1. Judgment in the sum of \$32,635.62 for wages, plus interest at the legal rate pursuant to Civil Code, Section 3287, and the sum of \$16,550.00 for penalties, or according to proof, as and against DILLINGHAM CONSTRUCTION N.A., INC.;

2. Judgment in the sum of \$30,553.37 for wages, plus interest at the legal rate pursuant to Civil Code, Section 3287, and the sum of \$14,550.00 for penalties, or according to proof, as and against MANUEL J. ARCEO, individually and doing business as SOUND SYSTEMS MEDIA;

3. That the County of Sonoma pay said wages, interest and penalties over to defendants for payment to the workers and the Treasurer of the State of California, out of the funds being withheld by the County of Sonoma under the public works contract herein, prior to the payment of any claim allegedly due in the instant action or hereinafter claimed to be due by any other party;

4. For costs of suit and attorney's fees herein; and

5. For such other and further relief as the Court may deem just and proper.

DATED: January 23, 1991

/s/ Ramon Yuen-Garcia
RAMON YUEN-GARCIA
 Attorney for Defendants
 JAMES CURRY and DIVISION OF
 LABOR STANDARDS ENFORCEMENT
